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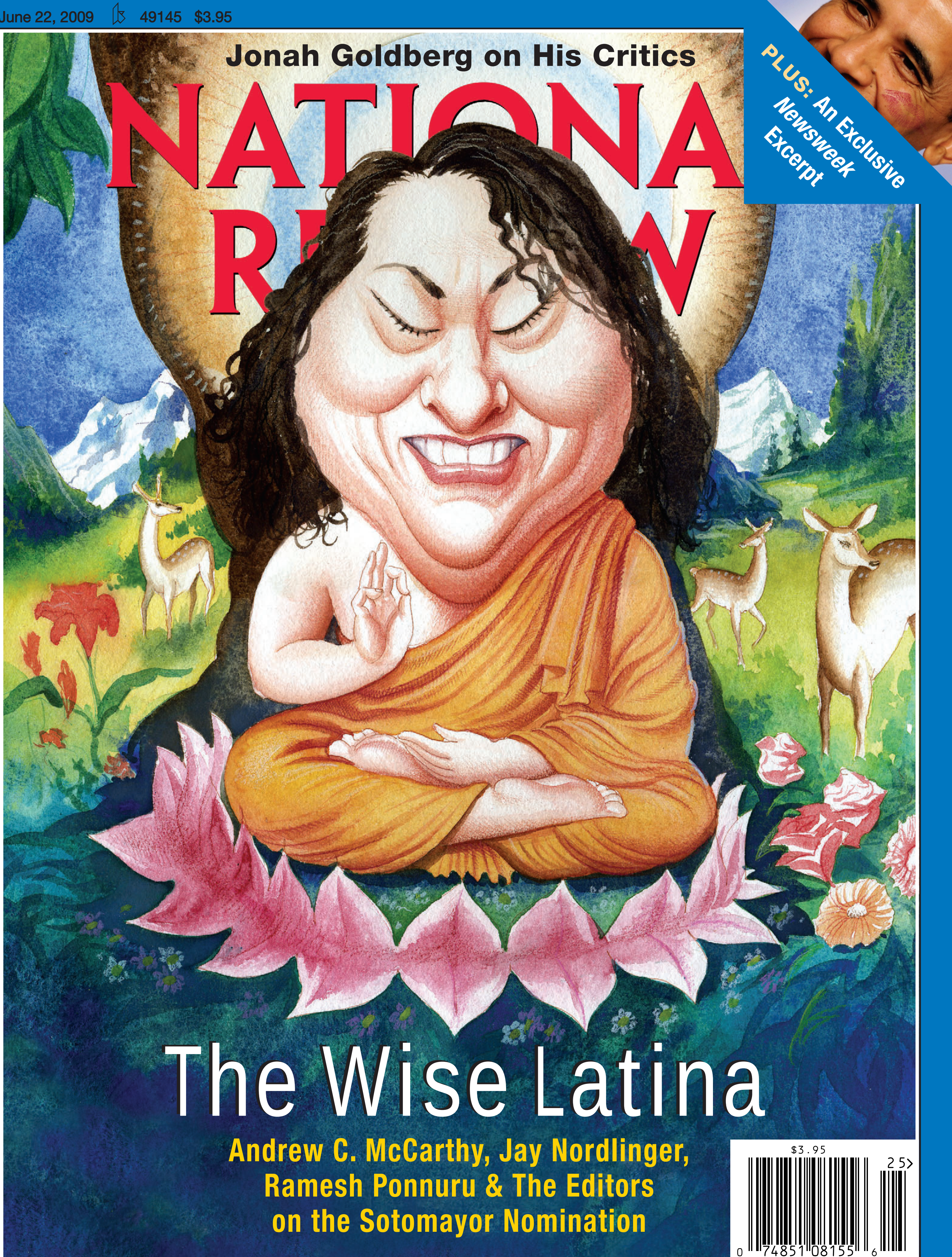
Jonah Goldberg on His Critics

NATIONAL REVIEW



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Contents

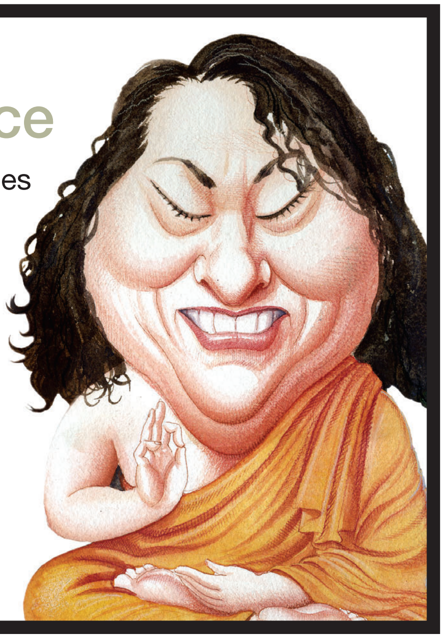
NATIONAL REVIEW

JUNE 22, 2009 | VOLUME LXI, NO. 11 | www.nationalreview.com

ON THE COVER Page 28

Undue Deference

Among the doleful consequences of our last elections is that our future is highly likely to include "Justice Sotomayor." The question is whether Senate Republicans, who were also elected, should be complicit in her elevation. "No" is a reasonable answer to that question. *Ramesh Ponnuru*



COVER: ROMAN GENN

ARTICLES

16 **JUDGING FROM EXPERIENCE** *by Andrew C. McCarthy*
Sonia Sotomayor's rhetoric and rulings give cause for alarm.

18 **STATES OF MIND** *by Jay Nordlinger*
Some notes on Sotomayor, race, and nagging questions of identity

22 **REGULATED TO DEATH** *by Sam Kazman*
Obama's CAFE standards will prove bad for business and lethal for consumers.

24 **CUBAN HOPES** *by Otto J. Reich & Orlando Gutierrez*
The people find their voice—but will the world help the Castros silence it?

FEATURES

28 **UNDUE DEFERENCE** *by Ramesh Ponnuru*
The wisdom of opposing Sotomayor.

32 **INTEGRATION NOW** *by Abigail Thernstrom*
The Supreme Court should scrap an antiquated and unconstitutional rule.

34 **OBAMA'S PLAYBOOK, IN PAPERBACK** *by Jonah Goldberg*
Liberal Fascism and its critics.

36 **MEXICO'S CARTEL WARS** *by Mario Loyola*
In some ways, the nation's rampant violence is a sign of progress.

Newsw
New, improved, *and longer* articles extolli

The All-New *Newsweek*! . . . p. 39

BOOKS, ARTS & MANNERS

42 **HOW IT WAS**
John O'Sullivan reviews Right Time, Right Place: Coming of Age with William F. Buckley Jr. and the Conservative Movement, *by Richard Brookhiser.*

46 **CAN WE OUTLAST THE CONTRADICTIONS?**
William Voegeli reviews Soft Despotism, Democracy's Drift: Montesquieu, Rousseau, Tocqueville, and the Modern Prospect, *by Paul A. Rahe.*

48 **RECONSIDERATIONS: THE OTHER O'CONNOR**
Terry Teachout returns to the novels of Edwin O'Connor.

50 **FILM: . . . AND AWAY!**
Ross Douthat reviews Up.

51 **CITY DESK: ATTENTION GETTING**
Richard Brookhiser endures a publicity tour.

SECTIONS

2 **Letters to the Editor**
4 **The Week**
40 **The Long View** . . . . *Rob Long*
47 **Poetry** . . . . *Daniel Mark Epstein*
52 **Happy Warrior** . . . . *Mark Steyn*

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Letters

Specifically Intended

Although I often agree with Andrew C. McCarthy on the issue of terrorist detainees, I believe he is mistaken in his accusation of hypocrisy against the Obama administration on the issue of torture and "specific intent" ("Torture Is a State of Mind," May 25).

McCarthy first distinguishes between the legal concepts of "general intent" and "specific intent." These correspond to what in moral philosophy would be called "foreseen-but-unintended consequences" and "what is directly intended." A classic example of the distinction is the difference between removing a cancerous uterus knowing that the unborn fetus within will die, and a direct abortion. So far so good.

He then compares the 2008 case *Pierre* v. *Attorney General of the United States* to Jay Bybee and John Yoo's "torture memo." In *Pierre*, the court defined torture in terms of specific intent to cause severe pain. McCarthy then argues that because Eric Holder's Justice Department used *Pierre* as a precedent in favoring the deportation of John Demjanjuk, the Obama administration is hypocritical for threatening to prosecute Bybee and Yoo, who defined torture in the same way.

But Bybee and Yoo use a different definition of "specific intent." In the memo they say that "the infliction of such pain must be the defendant's precise objective." In other words, an interrogator can use any means whatsoever, and it is not torture, so long as his objective is to gain information rather than specifically to inflict pain. But this is an absurd definition; by its standard, if a man owed me money and I knew he had it on him, killed him, and took the money back, I had no specific intent to kill him. In the *Pierre* case, the deportee's suffering is a foreseen but unintended consequence; in the scenario envisioned by Bybee and Yoo, a detainee's suffering is the directly intended means to a further end.

Matthew Shadle
Dubuque, Iowa

ANDREW C. MCCARTHY REPLIES: Mr. Shadle misses some important points. First, it was the judges in the *Pierre* case themselves who made clear that their court (the Third Circuit) was adopting the specific-intent standard of the Bybee/Yoo memo. The minority judges expressly complained—pointing out that the guidance had been withdrawn by DOJ—but they were outvoted by a whopping 10–3 margin. The Obama/Holder Justice Department obviously knew this when it relied on *Pierre* in arguing that the Germans would not be guilty of torture, even if they inflicted severe pain on Demjanjuk, because they did not have a motive to torture him.

Second, a jury would have to convict a torture defendant if it believed his claimed motivation was just a pretext.

And third, the Bybee/Yoo guidance speaks not only to intent but also to avoiding the infliction of severe pain—it is urging not a pretext but a good-faith avoidance of torture.

Correction

We apologize for an editing error in Tom Shippey's essay "Of Beauty and Loss" (June 8). A passage in the printed version asserts that Tolkien "was mesmerized by Norse, which was well-preserved in Finland: The complete lack of literary tradition in that country meant that oral tradition survived powerfully into the modern era." The passage should read as follows: "He was mesmerized by Norse, and even more by Finnish. The complete lack of literary tradition in Finland meant that oral tradition survived powerfully into the modern era."

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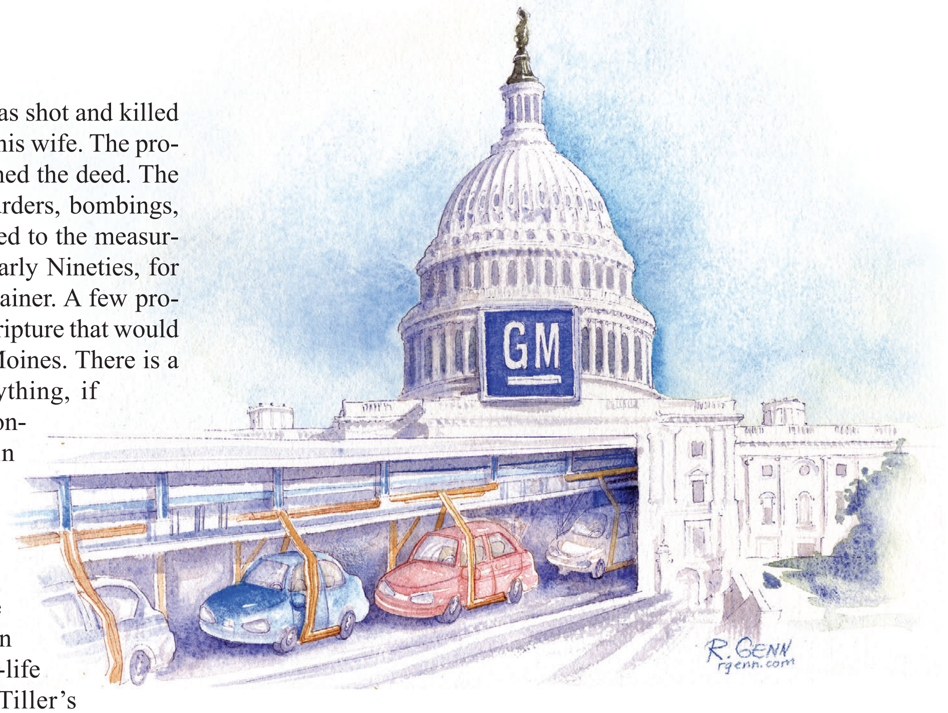
*ICF International: *Strengthening Our Economy: The Untapped U.S. Oil and Gas Resources*, December 2008

The Week

■ But it worked so well for Yugo.

■ Dr. George Tiller, a Wichita abortionist, was shot and killed at his church on a Sunday, in the presence of his wife. The pro-life movement almost unanimously condemned the deed. The abatement of anti-abortion lawlessness—murders, bombings, mob scenes at abortion mills—has contributed to the measurable public turn against abortion since the early Nineties, for without distraction, the evil of abortion is plainer. A few pro-life zealots weaseled. “There is a Christian scripture that would support this,” said one Dave Leach of Des Moines. There is a Christian scripture that would support anything, if misread by wicked idiots. No Christian can condone murder, as a tool of political action, in a nation of laws. Abraham Lincoln spoke about another holy murderer, John Brown, 150 years ago. “An enthusiast broods over the oppression of a people till he fancies himself commissioned by Heaven to liberate them. He ventures the attempt, which ends in little else than his own execution.” The pro-life movement cannot have a pro-death wing. Tiller’s profession will be put out of business by hard work, votes, and peaceful witness.



ROMAN GENN

■ Government Motors? The name has the proper initials, but the connotation is imprecise. It implies that GM became a government-run company only when the feds acquired a 60 percent stake in it as a result of its bankruptcy filing. In fact, Detroit has been a government project for some time now. It is the government that has tasked the Detroit automakers with two expensive missions: a) provide health care, benefits, and high-wage employment to the United Auto Workers union, and b) build the little green cars that President Obama and the Democrats want them to make, and that the American people do not want to buy (at least not from Detroit, while Japan makes them better, for less). In exchange, the government has guaranteed that the Big Three will continue to enjoy implicit and explicit taxpayer support. (Even Ford, the only company that did not take bailout money, is expected to help itself to some of the $25 billion in loans that Congress set aside last year to assist Detroit in retooling for its green future.) The reality is that GM will remain a government-sponsored enterprise even after the government divests itself of its formal ownership stake: Fannie Motors might be a better nom de ridicule.

■ Ted Olson, President Bush’s solicitor general and a Federalist Society mainstay, has found a new legal cause: same-sex marriage, which he believes the Constitution requires all states to recognize. He has filed a lawsuit to that effect in federal court with David Boies, his nemesis from *Bush* v. *Gore* days. Left-wingers are saying that Olson and Boies are pushing too far too fast, given the state of public opinion. If the Constitution really said what Olson thinks it does, public opinion would have to yield. But he is not correct. Treating marriage as by its nature the union of a man and a woman does not discriminate against homosexuals any more than it discriminates against people who want to form unions of three people. Nobody who ratified the Constitution’s guarantee of equal protection meant to keep states from making these distinctions. Olson is a sincere and formidable advocate, but on this issue he ought to lose.

■ The Obama administration’s fiscal incontinence has awakened the “bond vigilantes,” investors around the world who are driving up the yields on ten-year Treasuries. They are doing this because they calculate, not without reason, that the current spending spree will aggravate inflation, enfeeble the dollar, and diminish the U.S. government’s creditworthiness. The term “bond vigilante” was coined by economist Ed Yardeni, who wrote, “If the fiscal and monetary authorities won’t regulate the economy, the bond investor will. The economy will be run by vigilantes in the credit markets.” Bonds normally rally during recessions, but the quadrupling of the U.S. deficit has spooked bond buyers, who are wondering where, precisely, President Obama plans to get the $3.25 trillion he will need to cover the budget shortfall this year, and another $1.38 trillion in 2010. Along with the government’s borrowing costs, higher Treasury yields will drive up rates on mortgages and corporate bonds, complicating the recovery in the housing market and the broader economy. The Fed currently is conjuring money

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out of the vasty deep, and that must have consequences. President Obama came into office believing that he could make the world anew, but he cannot repeal the laws of economics.

■ In his speech at the National Archives, President Obama indulged his penchant for rebuking his predecessor even while adopting his counterterrorism policies. The president decried Bush's policies as an "ad hoc legal approach for fighting terrorism that was neither effective nor sustainable." But the basic principles of Bush administration's counterterrorism campaign were not designed on the fly: Detaining combatants has been a staple of warfare in every armed conflict America has fought. The strategy, furthermore, was extraordinarily effective (no domestic terror attacks in almost eight years), and it is entirely sustainable—indeed, Obama has sustained its major elements. The real war right now is between Obama's rhetoric (increasingly hollow repetitions of the Left's mantra about "torture," indefinite detention, and the betrayal of "our values") and his actions (which include targeted assassinations in Pakistan, indefinite detention, and, now, military commissions for al-Qaeda war criminals). Calculatedly, Obama chose to give his speech on the same day the less popular Dick Cheney gave a long-scheduled national-security speech at the American Enterprise Institute, defending the Bush strategy. That Cheney is winning the public debate is not a surprise; that he appears to be winning it within the Obama administration is a welcome one.

■ The timing was regrettable (or fortunate, depending on your perspective), but just as President Obama, in his National Archives speech, broached the possibility of transferring terrorist detainees to U.S. prisons in order to achieve his goal of closing Gitmo by year's end, the FBI in New York announced the arrests of four Muslim men, at least some of whom had been radicalized during stints in American jails. They were charged with engaging in a terrorist conspiracy to fire missiles at the U.S. Air National Guard base in Newburgh and bomb

Recession Blues

Yale economist Ray Fair has studied the impact of the economy on presidential elections and found that bad economies tend to hurt incumbent parties. Republicans, still smarting from the wounds of last November, know exactly how that process works. Democrats successfully convinced voters that President Bush and his party were to blame for our economic collapse.

Bush certainly deserves some of the blame, but there is plenty to go around. One of the ironies of the last election cycle, in which so much of the map went blue, is that the states that have done the most to hurl the nation into recession have been blue historically. The nearby chart adds intriguing "color" to that observation.

The chart plots the average unemployment rate in April for different categories of blue and red states. The first bar gives the average unemployment rate in April for "reliably" Democratic states, defined as those that have voted for the Democratic candidate in every presidential election since the 1980s. The average unemployment rate in these states was a whopping 9 percent. The remaining bars show that unemployment is less severe in states that only recently began taking Democratic medicine.

The next three bars tell a strikingly different story. The first red bar shows the average for states that switched to the Republican side in the 2000s. Unemployment in these states is a tad below the national average.

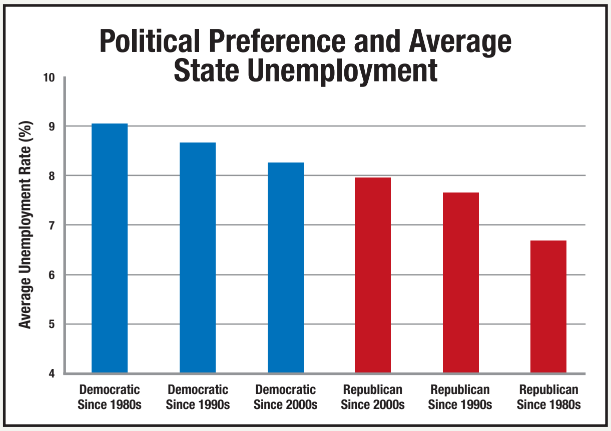
The second red bar shows the average unemployment rate in states that switched to red in the 1990s. Unemployment in these states is now well below the national average. The third red bar shows the average for states that have voted for the Republican presidential candidate in every election since the 1980s. Think of these as the "super reliable" red states. The average unemployment rate in these states stood at only 6.7 percent.

States that are traditionally Republican have avoided the worst of this recession. The longer a state has been taking Republican medicine, the better off it is. The contrast between the two patterns could hardly be more noticeable. If Republican policies have been vitamins, Democratic policies have been poison.

The economic data suggest that Democratic policies effectively spread human misery. President Obama now has the political power to do for the nation what Democrats have done to California.

The only consolation is that Professor Fair's model will quite reliably predict political and policy reversals as the economic misery spreads across our nation.

—KEVIN A. HASSETT



SOURCES: BLS, NARA. NOTE: AVERAGE UNEMPLOYMENT RATE REFLECTS THE PRELIMINARY APRIL UNEMPLOYMENT RATE BY STATE RELEASED 5/22/2009.

VOL. CLVIII....No. 35 **Natural Science News** "For Your Health"

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*These statements have not been evaluated by the FDA. This product is not meant to diagnose or treat any disease. Vinotrol is not endorsed, associated or affiliated in any way with Harvard University, Johns Hopkins, Salk Institute or UC Davis Medical. * CBS News, Nov 1, 2006* synagogues in the Bronx. The government can try to purge terms such as "jihad" and "Islamofascism" from our lexicon, but the threat is not going away—something we would understand better if we spent more time focusing on the hate ideology that drives it and less time on Gitmo and other "symbols" over which the Left, in its determination to blame America first, obsesses.

CHRIS CHRISTIE: MIKE DERER/AP

■ Jon Corzine's governorship of New Jersey has veered from one crash to another (sometimes literally, as when his state-trooper-driven SUV hit a guardrail going 90 miles an hour). As he runs for reelection, he seems eager to change the subject from his tax-and-spend record to his opponent's alleged resemblance to George W. Bush. That opponent will be former U.S. Attorney Chris Christie, a moderate conservative who just won the Republican primary against a more conservative rival. That rival, former Bogota mayor Steve Lonegan, was more specific in his indictment of the effects of decades of misgovernment on the state economy. Christie should borrow some of his lines, which would help unify the party and put the race into focus for independent voters. Christie's platform is vague, but to the right of previous Republican governors such as Christine Todd Whitman. If he wins in New Jersey, the effect will be seismic.

■ California has historically been a good place to start a tax revolt. The 1978 passage of Proposition 13, which capped property taxes and contained language requiring a two-thirds majority for any tax increase, prompted similar measures in other states and heralded the ascendancy of Ronald Reagan. But we doubt the defeat of Proposition 1A last month signifies a similar sea change. Californians have voted down a tax increase, but that won't mean much if the state simply borrows the money from Washington, which in turn borrows it from all of us. Gov. Arnold Schwarzenegger, after years of his own overspending, has proposed a list of deep spending cuts, including the elimination of 5,000 state jobs and a 5 percent pay reduction for the remaining employees. But he faces recalcitrant Democratic majorities in the state legislature that refuse to stand up to government-employee unions. If California cannot resolve its budget impasse by July, it will run out of cash, and the Obama administration will not likely allow it to default. Californians want low taxes, but they also seem to want a government they can't afford.

■ Sen. Roland Burris (D., Ill.) wants you to know that he did not pay for his seat, and he didn't, but is that enough? Burris was taped by feds investigating former Illinois governor Rod Blagojevich (who has since been indicted) on corruption charges. The aspiring solon had a seven-minute conversation with Robert B., the governor's brother and fundraiser, last November, in which he made a number of points. First: "I want to help Rod." Second: If he held a fundraiser, "then Rod and I [are] both going to catch hell." Third: "I might be able to do this in the name of [Burris's law partner]." Fourth: "I hope I get a consideration to get that appointment." Senator Burris says he did not in fact hold or inspire any fundraisers, so what's the problem? Only that he testified, early this year, to the Illinois legislature that he had not talked with Blago's minions about paying for the seat, or even about the seat itself. Which could be perjury, which is certainly par for the course in Illinois.

■ Maryland has discovered that you can try to soak the rich, but the rich know how to swim across the Potomac. Faced with a budget shortfall, Maryland's state legislators enacted a higher tax bracket for millionaires—6.25 percent on top of federal and local taxes. One-third of Maryland's millionaires vanished from the tax rolls, many seeking haven in Virginia, Delaware, and Florida. The result: Even with the higher rate, Maryland is now collecting $100 million a year less from the guys in monocles and top hats. Capital is mobile. So are capitalists.

■ The National Center for Health Statistics (NCHS) reports that America's out-of-wedlock birthrate hit a record high in 2007, when nearly 40 percent of all births were to unmarried women. In 2002, the rate was about 33 percent. The recent increase has been particularly sharp among Hispanics, America's largest and fastest-growing minority group. In 2007, more than 50 percent of all Hispanic births were out of wedlock. Republican advocates of open immigration frequently tell us that Latinos are a "natural constituency" of the GOP, given their religious faith and conservative values. But the NCHS figures suggest they are adopting the worst cultural habits of the American underclass. The Pew Hispanic Center estimates that "69 percent of first-generation Latino children live in married-couple families, compared with 73 percent of second-generation children and just 52 percent in the third generation or higher." Make no mistake: Nonmarital births are concentrated in the bottom half of the income scale. If the trend continues, American society could become alarmingly polarized.

■ The Obama Justice Department filed a brief asking the Supreme Court to let stand a ruling that denies 17 Uighurs—Muslims from Chinese Turkestan—a right to be released into the United States. Human-rights activists howled that Obama was betraying his commitment to close Gitmo by year's end. The move nonetheless heartened much of the public—the great majority of which recoils at the notion of trained jihadists' living in their midst. But the Justice Department's brief studiously avoided mention of the immigration statute that prohibits granting entry to aliens who have been affiliated with terrorist organizations or have received terrorist training. That is, it declined to acknowledge any limitations on the administration's power to admit jihadists into the United States. The plan to close Gitmo hinges on persuading other countries to take some of the detainees off our hands—which, the administration reasons, will not happen unless we are willing to resettle some here. Maybe those left-wing activists have not been betrayed after all.

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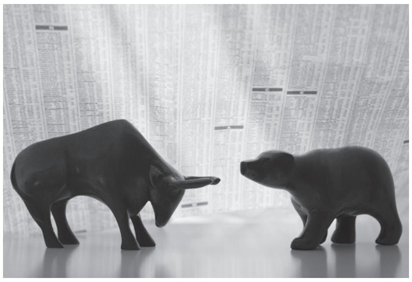

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■ Career prosecutors at the Justice Department went after some Obama supporters in the New Black Panther Party following shocking allegations that those supporters had intimidated voters with threats, racial epithets, and a nightstick. The *Washington Times* reported that Justice even secured an affidavit from poll watcher Bartle Bull, a former Bobby Kennedy aide and longtime civil-rights activist, who witnessed three uniformed NBPP members confronting and intimidating voters with that nightstick. Bull related that one Panther told a white poll watcher, "You are about to be ruled by the black man, cracker." In all his experience, Bull added, he had never seen "another instance in the United States where armed and uniformed men blocked the entrance to a polling location." Justice won the case because the defendants ignored the complaint. Then Obama's political appointees stepped in. Shortly after career prosecutors began seeking penalties based on the default, Attorney General Eric Holder's subordinates directed that the cases against two of the defendants be dropped. A third was merely ordered to refrain from displaying a weapon near a polling place for the next three years. Where is Congress? Can it be roused only by *imaginary* politicization of the Justice Department?

The Left rarely sees a problem it will not flee, if flight brings difficulty or discredit to America.

■ "We expected broken promises," writes Ted Rall, left-wing cartoonist. "But the gap between the soaring expectations that accompanied Barack Obama's inauguration and his wretched performance is the broadest such chasm in recent historical memory." Rall cites a number of examples, from not recognizing the Armenian genocide to holding on to Gitmo detainees, then concludes that Obama "ought to step down now—before he drags us further into the abyss." Laugh if you like. But remember that the late R. W. Apple called Afghanistan, in October 2001, a "quagmire." The Left rarely sees a problem it will not flee, if flight brings difficulty or discredit to America. They are single-minded, and tireless—as Obama, a former trouper, must know.

■ "From behind a burning bus barricade Saturday night comes the gunfire of soldiers advancing toward Tiananmen Square." So 20 years ago Claudia Rosett of the *Wall Street Journal* began her account of what is now remembered in China as "June 4." "People snatch up bricks and bottles, their only weapons against the guns of their country's own army. . . . Bullets ricochet off the stone walls that line the road." Deng Xiaoping's economic reforms had been accompanied by a measure of free speech, but by the spring of 1989, students, workers, and ordinary people had taken it to levels the regime could not tolerate. "As the crowd falls back again, a man in thick spectacles stops a Western reporter. . . . 'Terrible,' he says. 'Very terrible.'" The final target of the crackdown was Tiananmen Square, in the heart of Beijing, with its makeshift statue of the Goddess of Democracy. Perhaps 2,600 people died that night; hope for political reform died with them. "If China's democratic uprising has achieved nothing else, it has at least flushed into view the naked shape of China's Communist Party." It did; it still does. Remember.

■ North Korea detonated a nuclear weapon and test-fired long-range missiles, shattering more than two years of U.S.-led diplomacy. This was Pyongyang's second nuclear test; the first occurred in October 2006. The Bush administration responded to that first blast by softening its approach to Kim Jong Il and embarking on protracted negotiations, which yielded a massive new aid package for the Communist regime, an easing of sanctions, and North Korea's removal from the U.S. blacklist of state terror sponsors. This approach exasperated the Japanese, and has now failed utterly. Rather than rely on China to cajole its client (an approach that has been tried without result), the U.S. should squeeze North Korea's finances and boost inspections of its ships. We hope that President Obama will also rethink his decision to slash funding for the Missile Defense Agency. The Hermit Kingdom remains as inscrutable as ever, but there is evidence that a political transition is under way. Clamping down on Pyongyang's cash flow remains the best way to maximize our (admittedly limited) leverage.

■ The Parliament expenses scandal in Britain has claimed victims in all the major parties, yet David Cameron and the Tories seem to have been the least affected—in part because Cameron cracked down hard on malefactors in his own ranks, in part because the stink of the status quo clings to Labour, the party in power for twelve years. European Union elections shortly after NR goes to press will show which way the wind is blowing; one last-minute poll, for the *Times* of London, had the Tories first at 30 percent and the UKIP (an anti-EU party) second at 19 percent, with Labour, Liberal Democrats, and Greens trailing. However the parties do this month, they will field many new faces for the next parliamentary election, which must be held before June 2010. Britain, wrote journalist Amir Taheri, "may not experience a classical revolution with barricades. . . . However, it is certain to witness a major re-shuffle of the political elite with a new prime minister, new government, and a House of Commons where, for the first time since 1945, a majority of members will be newcomers."

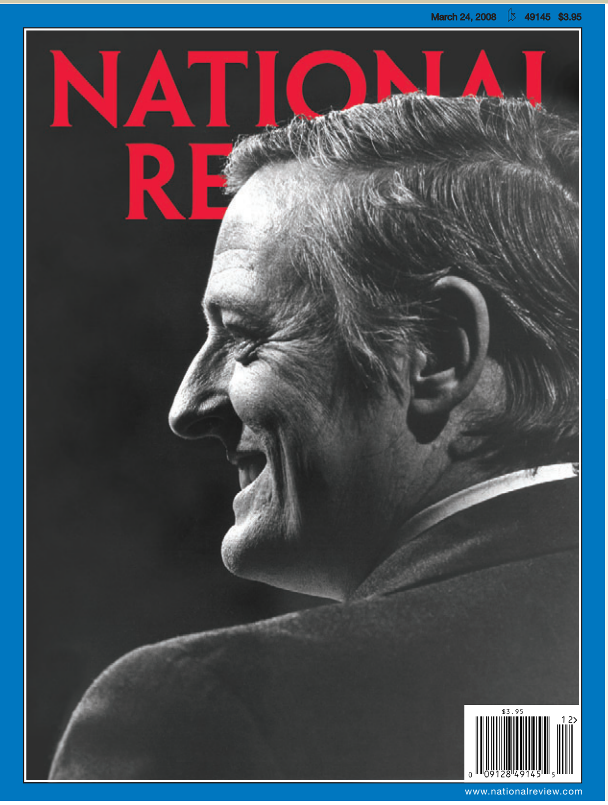
■ President Obama has led many to think that he would favor the Palestinians at the expense of Israel, and sure enough, here comes evidence for it. According to Hillary Clinton, Obama is asking for a total stop to every kind of Israeli settlement on the West Bank. About 300,000 Israelis live there, and they are now supposed not to build so much as an extra room on their houses. Weakness or indecision could bring down the fractious Israeli coalition government, and Obama is happy to be putting prime minister Benjamin Netanyahu on the spot. West Bank Israelis look to Netanyahu for support; the electorate by and large would not stand for stringent measures to contain the settlers' presence (not to speak of measures to reduce it, as in the Gaza Strip). Obama is treating West Bank settlement as the cause of Middle East unrest, when in reality it is only a minor symptom. Netanyahu is putting forward the alternative proposition, that Iran's nuclear development is the issue that will determine the future of the region, and that Obama should not allow himself to be distracted from the threat emanating from Tehran. Either way, a storm is on the horizon.

■ The Pakistani army has driven the Taliban out of the Swat Valley and recaptured Mingora, the one sizable town there. Some Taliban leaders have been killed, and others have fled to the mountains of Waziristan, where they may still be pursued. Critics liked to maintain that the Pakistani army was trained only for warfare with India, but it evidently has adapted well to this insurgency, losing few men and killing some 1,200 Taliban fighters (out of an estimated 5,000). The Taliban has made the same mistakes in Pakistan as it did in Afghanistan. It murdered in the name of sharia law, blew up schools, terrorized women and girls, and press-ganged young men and even boys. Many hundreds of thousands of refugees—some say 2 million or more—took to the roads to escape, and are now in refugee camps. Threatening to extend its campaign to the whole country, the Taliban has sent suicide bombers into Lahore, Peshawar, and Islamabad. Public opinion has now set massively and even violently against it. Pakistanis have had enough; just in time, too.

■ Years ago, Rep. Nancy Pelosi was a high-profile advocate of human rights in China. She is from San Francisco; there are Chinese Americans there. Now she is Speaker Nancy Pelosi—exalted. And she has bigger fish to fry. At the beginning of the new administration, Secretary of State Hillary Clinton declared that human rights in China would be on the back burner, if there. Speaker Pelosi is following suit. Recently she was in China to talk up global warming. The Associated Press had a headline that said, "Pelosi Dodges Human Rights on China Visit." Pelosi retorted, "Protecting the environment *is* a human-rights issue." Which will certainly be comforting news to Chinese democrats in dungeons and camps.

■ As the Associated Press informed us, "Fidel Castro criticized former U.S. Vice President Dick Cheney for defending American interrogation methods against terror suspects, saying . . . that torture should never be used to extract information." That's right: It should be practiced for the sheer, sadistic pleasure of it.

■ One by one, the lights have gone out in Hugo Chávez's Venezuela; there is almost none left. Mario Vargas Llosa, the Peruvian writer and politician, has tried to provide some light. He traveled to Venezuela to participate in a pro-democracy forum. He was detained at the airport for over an hour, and told that, as a foreigner, he had no right to make political comments while in the country. Vargas Llosa retorted that "nobody can put limits on free thinking." Later, Chávez went so far as to challenge Vargas Llosa and other critics to a debate—and then backed down. At a summit in April, President Obama called



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Chávez his friend—“mi amigo.” But Chávez is no friend to democracy, freedom, or dignity.

■ Ayman Nour is a brave man, and as a democrat and opposition leader in Egypt he needs to be. A lawyer, and the founder and head of the al-Ghad (Tomorrow) party, he ran in the 2005 election against Hosni Mubarak, who has been running Egypt by emergency decree for over 20 years. In the circumstances, Nour’s bid was hardly more than a symbolic gesture, but Mubarak made sure to send him to prison for four years. Released this February, Nour has petitioned Mubarak to lift restrictions on his civil and political rights. Then he declared that he would run for president again in 2011. The very next day, someone on a motorbike rode up to him in the street, identified him by name, and fired an improvised flame-thrower. Nour’s forehead, the side of his face, and much of his hair were burned. The attack was probably timed to coincide with President Obama’s much-heralded June visit to Cairo. “In an authoritarian regime like ours you cannot know the reasons why things like this happen,” says Nour, giving proof that his courage has not been even lightly singed.

■ Benno Ohnesorg was a model young German in the legendary Sixties: a hippie, pacifist, and poetry lover, naturally *antifa* (the lingo of that day for “anti-fascist”). The poor fellow went to a demonstration in Berlin in 1967 against the visiting shah of Iran, then a villain for everyone like Benno. Nobody quite knows whether by accident or on purpose a policeman named Karl-Heinz Kurras shot him dead. Two tribunals exonerated Kurras. The Left, including the Baader-Meinhof gang and other terrorists, came to believe that Benno was a victim of the capitalist state, revealed in all its ugliness. But researchers have just discovered from the archives that Kurras was not a lackey of the West German ruling class after all, but beginning in 1955 a clandestine member of the East German Communist Party, and more than that, an agent of the Stasi, their secret police. Eighty-one now and still a resident of Berlin, Kurras is unashamed, asking, “What if I did work for them?” Well, for one thing, the Stasi manipulated public opinion and the Left was royally duped; and for another, without it post-war Germany might have been less troubled in finding its identity.

■ Tens of thousands died in Buchenwald, one of the most infamous Nazi concentration camps, and it is right for President Obama, or indeed anyone, to go there in commemoration. But it is not all right for anyone in an official or representative position like the president’s to visit Dresden during the same trip and for the same purpose. In February 1945, Stalin asked for a large-scale air raid on Dresden and its railheads, to relieve the pressures on the Red Army held up in Hungary. The Dresden firestorm followed. Something like 20,000 people died; for propaganda purposes Goebbels built this figure up by a factor of ten. The indiscriminate targeting of civilians, though practiced to one degree or another by all of the belligerents in World War II, is wrong, and we should be glad the civilized nations subsequently abandoned and condemned this tactic. But the president’s itinerary, implying as it does an equivalence between the Nazis and the Allies who saved the world from them, is a failure of diplomacy, intellect, and morals.

■ Queen Elizabeth was not invited to the ceremony marking D-Day this year—it is the 65th anniversary. The snub, as you doubtless have guessed, was thanks to France. According to reports, the lady was quite miffed at her exclusion. May she find consolation in Great Britain’s healthy relations with another nation that did not surrender to Germany—and by the inspiring speeches its president so thoughtfully placed in the iPod he gave her.

■ There are few sounds more pleasing to the conservative ear than the clang of colliding liberal pieties. Consider the recent case of Michaëlle Jean, governor-general of Canada, which is to say, viceroy under Queen Elizabeth of England, Canada’s head of state. Jean incarnates an unusual quantity of politically correct essences, being black, female, and an immigrant (from Haiti to Canada when aged eleven). On an official tour of a far northern region inhabited mainly by Eskimos, she participated enthusiastically in a traditional folk ceremony associated with the main source of local income. Unfortunately that source is seal hunting, and the ceremony involved eating a sliver of raw meat from the heart of a young seal Jean had just helped to butcher. We wish we could tell you that she had personally clubbed the seal to death before gutting it, preferably in front of a platoon of keening Greenpeace activists; but alas, this is not recorded. We’ll take what we can get, though, and wait with interest to see how Sarah Palin will react to having been upstaged like this.

SERGEI SUPINSKY/AFP/GETTY

■ Pastor David Jones and his wife, Mary, hold a regular dinner and Bible study in their Bonita, Calif., home. One day, Mrs. Jones found the fuzz on her doorstep. “Do you say ‘Amen’?” asked a San Diego County code-enforcement officer. “Do you pray?” “Do you say ‘Praise the Lord’?” Mrs. Jones pleaded “guilty” on all three counts. Someone visiting a neighbor had complained of the cars on the street. The Joneses were later notified that they would have to “stop religious assembly or apply for a major use permit”—which could cost them tens of thousands of dollars. Religious-rights lawyers stepped up to support the Joneses. One blasted the county’s “KGB tactics” and said, “Government agents have no place questioning American citizens about how they choose to worship in their home.” Another said, “If the county thinks they can shut down groups of ten or fifteen Christians meeting in a home, what about people who meet regularly at home for Poker Night? What about people who meet for Tupperware parties?” and so on. We imagine that, in San Diego County—one of the most beautiful and serene places in America—there is not a lot of major crime. But surely the county’s fuzz have something better to do than harass David and Mary Jones.

■ Elizabeth Dean was nine weeks old when the *Titanic*, which was taking her and her family to America, sank off Newfoundland. The infant, her two-year-old brother, Bertram Jr., The simplest, most accurate watch on the planet!

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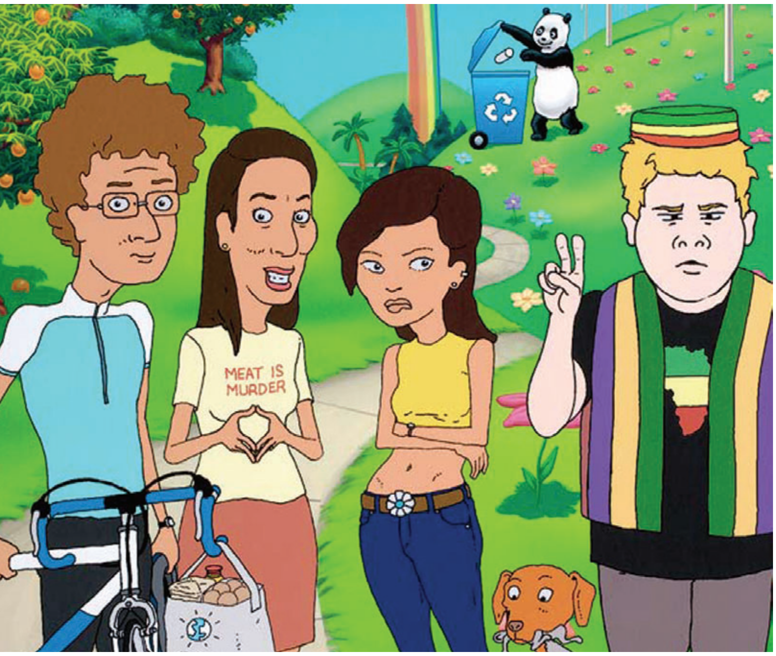
and her mother, Georgetta, were saved. Her father, Bertram, died. Miss Dean (who used the first name Millvina) led a quiet life, working as a secretary in Southampton, the port from which the *Titanic* sailed. She never made much of her link to the disaster until James Cameron's blockbuster movie came out, and she used her history to pay her modest bills. She would not watch the film all the way to the end, however, lest it provoke sad thoughts about her father's death. Dead now herself at 97, the wreck's last survivor. R.I.P. So time sinks even pain, deeper than the great ship.



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■ We always welcome encouraging signs on the pop-culture front, and the new ABC series from Mike Judge, creator of *Beavis and Butt-Head* and *King of the Hill*, is one such sign. Called *The Goode Family*, the show lampoons an upper-class liberal household. The premiere featured obvious gags about organic food and racial sensitivity, but there were plenty of Judge's trademark subtler jokes, too: A briefly seen reusable grocery bag bears the moniker "An Inconvenient Bag," and the family dog's name is Che. TV series come and go, but Judge has a history of keeping his shows interesting—*Hill* stayed on the air for 13 seasons, and its recent cancellation drew many protests from die-hard fans. We hope and expect to laugh at the Goodes for a long while.

■ Do blondes have more fun? Not when brunettes have more money. That's the lesson to be learned from the news that Archie Andrews, of *Archie* comics fame, now in his twenties and a college graduate, has plighted his middle-class troth with wealthy Veronica Lodge instead of flaxen-haired girl-next-door Betty Cooper. The choice was a difficult one, though it is a dilemma we suspect most bachelors would gladly face: Both women are beautiful, spirited, and shapely as only a comic-book siren can be; and both have, with inexplicable loyalty, remained stuck on the decidedly nebbishy Archie through half a decade of Kierkegaard, cigarettes, and college boyfriends. We feel sorry for Betty, but she should have seen this coming: Push comes to shove, you can make a brunette blonde a lot easier than you can make a poor girl rich. Yet somehow it seems unlikely that the last panel of the Archie/Veronica/Betty story has been written, so we await further developments. Our advice to Archie: Find a posher place to take her than Pop's Chocklit Shoppe. And to Veronica: Get a pre-nup.

■ The self-taught intellectual used to be an American type. Now the country has one fewer. Richard Nadler, 60, was a high-school dropout and musician. In the 1980s he became a conservative activist, working to promote school choice, phonics, and low taxes. He wrote books on Phil Gramm, Pat Buchanan, and feticide in Jewish law. (He had turned Orthodox.) In his last years he developed theories about how the conservative movement could find new recruits among blacks, Hispanics, and small investors, and worked to put those theories into practice. He also occasionally contributed to NR. His wife, Barbara, indulged him in all of these "unremunerative hobbies," as he once called them. He died suddenly, working at his computer. R.I.P.

THE LAW

Consent Denied

THE case for confirming Judge Sonia Sotomayor to the Supreme Court is nearly as damning as the case against her. Listen to her defenders. They say that she would be the first Latina justice, and that Republicans should therefore tremble before voting against her. They point to no flashes of brilliance in her legal opinions, presumably because there are none. They do not claim that she has distinguished herself by her fidelity to the law, presumably because neither she nor they think in these terms.

Identity politics has not proven an unalloyed boon for this nomination. The White House had to do damage control following a controversy over Sotomayor's claim, made in a speech and a law-review article, that the richness of Hispanic women's experiences could help them make better decisions than white male judges would. Her language was imprecise—for example, she described impartiality as an "aspiration" before questioning whether it was either possible or desirable—yet her meaning was clear. Obnoxious in theory, her claim was also untrue in practice. We doubt that there is a single decision Sotomayor has made that could be better explained by her ethnicity and sex than by her conventional liberalism.

Conventional liberalism these days sees the judge's task as the imposition of the most left-wing policies he can get away with. It is that judicial lawlessness that ought to be the main topic of hearings on Sotomayor's confirmation. The Constitution binds all of us, judges no less than citizens, because it is duly enacted law. When judges twist its provisions to mean something other than what they were enacted to mean, they abuse their office and weaken the rule of law. They also, not infrequently, damage our economy, endanger our national security, and undermine our values. Those effects of judicial self-aggrandizement ought to be on the senators' agenda as well.

Republican senators should press for a long debate. They should show Sotomayor procedural fairness at every turn, and examine her record and her views with civility. Barring some shocking revelation, she is going to be confirmed. Let it be without conservatives' consent.

How I Found The Gold Coin That Never Was

GOLD 1/20 OZ. FINE
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ISLE OF MAN · 1994
ELIZABETH II
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And how readers can take advantage of my major gold discovery!

by Nick Bruyer

Over a thousand years ago my Viking Warrior ancestors raided the coast of England in their great longships, striking terror into the hearts of their victims. But some of them stayed and settled on the Isle of Man, situated between England, Ireland and Scotland. It was during a visit to this ancient Isle that I stumbled onto something amazing—a precious piece of history that you can own and pass down through generations of your own family as a gold treasure of lasting value.

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As president of an international coin distributor, GovMint.com, I knew that the Isle of Man has its own legal tender coins. So I made a journey to the mint to meet the Mint Master. I was lamenting the fact that there was no gold coin commemorating their Viking heritage, when he told me that such a coin had been authorized, but never minted. The Twentieth Noble was to be struck in 99.99% fine gold. When I asked why it had never been minted, he didn't know. The Mint's official archives did not give a reason, but they revealed a startling fact.

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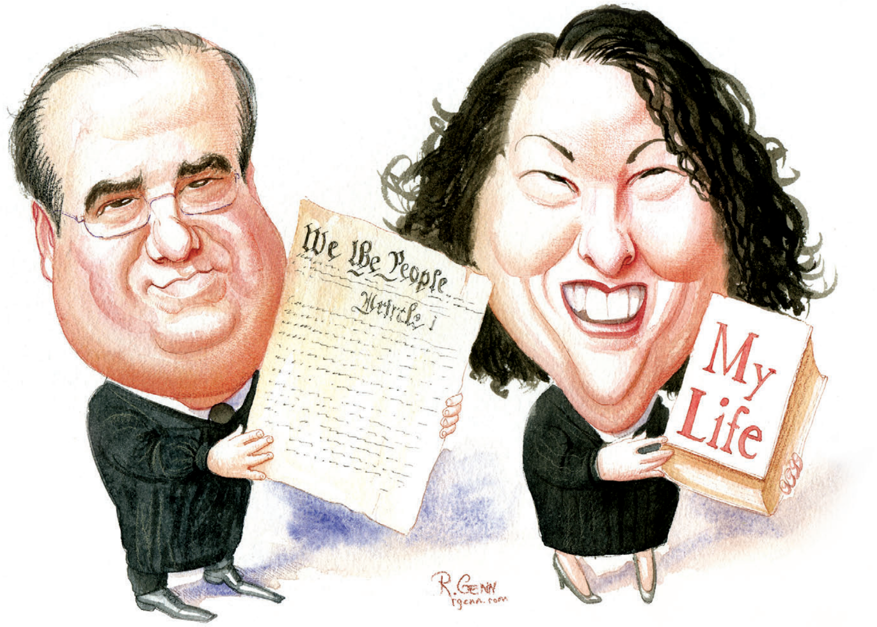

ROMAN GENN

Judging from Experience

Sonia Sotomayor's rhetoric and rulings give cause for alarm

BY ANDREW C. McCARTHY

Sonia Sotomayor was delivering the keynote address at a 2001 academic conference when she said, "Personal experiences affect the facts that judges choose to see." The speech has become infamous in the days since Pres. Barack Obama nominated her to replace retiring justice David Souter on the United States Supreme Court.

That infamy does not stem, as it should, from Sotomayor's matter-of-fact acknowledgment that she and many other judges "choose to see" some facts, and to disregard others, based on their "personal experiences"—which, given the prism through which Sotomayor chooses to view the world, means race and ethnicity. Instead, the speech is notorious because Sotomayor, in comparing the merits of jurists from different racial and ethnic backgrounds, declared that "a wise Latina woman, with the richness of her experiences, would more often than not reach a better conclusion than a white male who hasn't lived that life." That's a lightning rod of a claim: Had a white man contended that the richness of his experience rendered him a better judge than a Latina woman, his career would be over. Appreciating the volatility of this sort of rhetoric, leading Democrats are now insisting either that Sotomayor misspoke (the take offered by President Obama) or that her statement has been—all together now!—"taken out of context." That's the preferred spin of Senate Democrats, who will try to carry Sotomayor over the finish line.

These interpretations are indefensible. Sotomayor was not speaking off the cuff. She was delivering a lecture at a Berkeley law-school event attended by a slew of academic and judicial notables. The speech was for publication, in the *Berkeley La Raza Law Journal*, which titled the symposium "Raising the Bar: Latino and Latina Presence in the Judiciary and the Struggle for Representation." While there was some disagreement with Sotomayor, her views could scarcely have surprised anyone. As the American Bar Association noted in a 2000 profile, Sotomayor has been affiliated with the Puerto Rican Bar Association, the Hispanic National Bar Association, the Association of Judges of Hispanic Heritage, and the National Council of La Raza.

In context, moreover, Sotomayor's speech was worse than the explosive "wise Latina woman" comment suggests in isolation. "The focus of my speech," she proclaimed, was "to discuss with you what it all will mean to have more women and people of color on the bench." A self-described "Nuyorican" (the 55-year-old Sotomayor was born in the Bronx, of Puerto Rican parents), she complained about America's "deeply confused image of itself," a state of "perpetual tension" between the the desire to "take pride in our ethnic diversity" while we "insist that we can and must function and live in a race- and color-blind way that ignores these very differences that, in other contexts, we laud."

Sotomayor pointedly rejected the ideal "that judges must transcend their personal sympathies and prejudices and aspire to achieve a greater degree of fairness and integrity based on the reason of law," calling that a mere "aspiration" that is not achievable "in most cases." Everything is relative, she argued, quoting a Yale Law classmate's declaration that "there is no objective stance, but only a series of perspectives." In forming those perspectives, she maintained, "women or men of color" have "basic differences in logic and reasoning." Necessarily, this "will make a difference in the process of judging" as more people of color assume more influential roles on the federal bench. "What the difference will be in my judging," Sotomayor claimed she could not say. But she was certain that "there will be some, based on my gender and my Latina heritage."

Sotomayor's obsession with racial and ethnic identity politics was not taken out of context: It was the context. And we needn't speculate about whether it would infect her judging. As promised in the Berkeley lecture, it has already affected her judging profoundly—and in a manner that could complicate her confirmation hearings.

Sometime in the next four weeks, the Supreme Court will decide *Ricci* v. *DiStefano*. It is an affirmative-action case involving 20 Connecticut firefighters (19 white, one Hispanic) who were denied promotions because New Haven's exam, despite being rigorously vetted to ensure racial and ethnic neutrality, resulted in the qualification for promotion of too many whites and not enough minority candidates. The lead plaintiff, who was dyslexic, had gone to the extraordinary length of having the test materials audio-recorded, at his own considerable expense, so that he could master them. When the disappointed firefighters sued, a federal district court attempted to whitewash their constitutional equal-protection claims in an unpublished order granting summary judgment to city officials, despite conceding the existence of evidence that they "were motivated by a concern that too many whites and not enough minorities would be promoted."

On appeal, this barefaced violation of the Fourteenth Amendment was a fact that Judge Sotomayor chose not to see. Notwithstanding the obvious significance of the proceeding—which commanded unusually lengthy briefs from the parties, amicus briefs, an 1,800-page record, and an hour of oral argument, all well beyond the norm—Sotomayor and two other judges tried to bury the case in an unpublished order that summarily affirmed the district court. When the other circuit judges got wind of what had happened, the panel's legerdemain drew a withering rebuke from Judge José Cabranes, a highly respected jurist who, like Sotomayor, is both Hispanic and a Clinton appointee. Dissenting from the circuit's refusal (by a 7–6 vote) to have Sotomayor's decision reviewed by the entire court, Cabranes lamented the panel's shoddy treatment of

> significant constitutional and statutory claims of first impression . . . in an opinion that lacks a clear statement of either the claims raised by the plaintiffs or the issues on appeal. Indeed, the opinion contains no reference whatsoever to the constitutional claims at the core of this case, and a casual reader of the opinion could be excused for wondering whether a learning disability played at least as much a role in this case as the alleged racial discrimination. . . . This perfunctory disposition rests uneasily with the weighty issues presented by this appeal.

There is one logical explanation for Sotomayor's underhandedness: Her empathy did not encompass the white firefighters, and therefore she sought to deep-six a worthy case in a way that evaded Supreme Court review. No doubt swayed by Cabranes's expressed "hope that the Supreme Court will resolve the issues of great significance raised by this case," the High Court accepted it for review. If the tenor of the oral argument several weeks ago is any indication, the ruling could be an embarrassment for Obama's nominee on the eve of her confirmation hearings.

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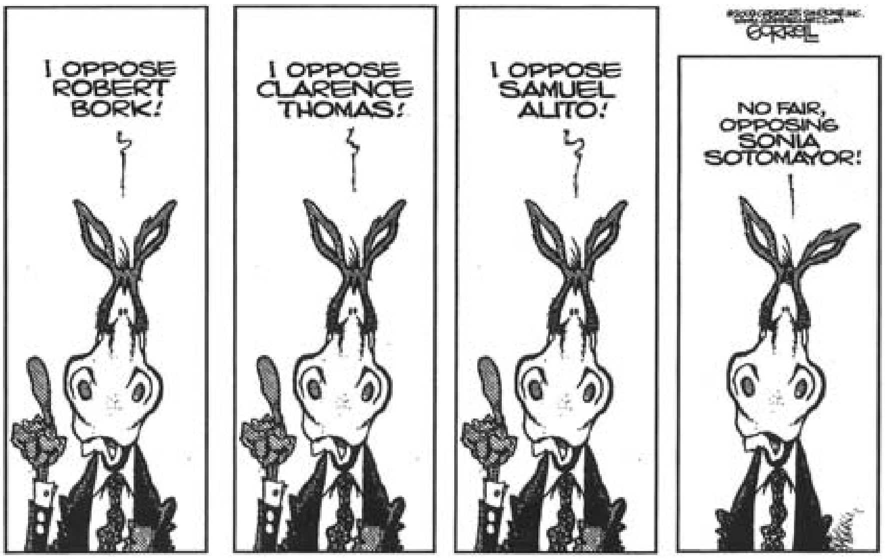
A reversal on *Ricci* would be far from the first for Sotomayor. Though the justices have not reviewed many of her cases, she has been reversed at an alarming rate in those that have been scrutinized. Earlier this term, the Supreme Court rejected her ruling that the Clean Water Act barred the EPA from using reasonable cost-benefit analyses, rather than a prohibitively costly alternative, in regulating power plants. Last term, the Court reached the same result as Sotomayor in a tax case, but Chief Justice Roberts's unanimous opinion faulted her for adopting a reading of the relevant law that "flies in the face of the statutory language." In 2006, the justices unanimously reversed her ruling that federal securities law had not preempted various state-law claims. In two 2001 cases, the Court rejected both an interpretation of copyright law she had espoused as a district judge and her ruling that the Court's 1971 *Bivens* case, which created a private civil action for money damages against federal officers alleged to have violated constitutional rights, should be extended to permit suits against government contractors.

This is not to suggest that Judge Sotomayor's rulings, as opposed to her rhetoric, have been either radical or outside the legal mainstream—which is leftist and activist. Gun owners are justifiably dismayed by her recent undermining of the Supreme Court's holding in *Heller* that the Second Amendment preserves a personal right to have a weapon in the home. But she is generally respectful of precedent—even in the Second Amendment case, she relied on an 1886 Supreme Court ruling that the amendment did not apply to the states. And in *Ricci*, she was plainly more a sneak than a crusader for affirmative action. While apparently pro-abortion, she has upheld both the right of anti-abortion protesters to sue police for using excessive force and the power of the government to favor "the anti-abortion position over the pro-choice position" in dispensing public funds (though she would no doubt uphold the opposite government choice as well). A left-leaning former prosecutor, she is sympathetic to criminal defendants and intolerant of alleged overreach by police, but she is not irrationally soft on crime; though solicitous of some prisoner abuse claims, her record on search-and-seizure issues is run-of-the-mill, and, as demonstrated in a thoughtful 2008 opinion, she has strongly defended federal sentencing guidelines.

In sum: As a judge, Sotomayor has been unremarkable. But Obama did not choose her because she is remarkable. He chose her because he wanted to appoint the first Hispanic to the Supreme Court. On that tribunal, she would not likely prove unremarkable. She would be untethered from the bonds of precedent that have kept her imperious instincts in check. Worse, she would be armed with an empathy license to pick winners and losers—in accordance not with the law, but with whatever facts she chose to see. She would be the Sonia Sotomayor of the Berkeley speech. And that would be lawless—just ask the New Haven firefighters. **NR**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States of Mind

Some notes on Sotomayor, race, and nagging questions of identity

BY JAY NORDLINGER

I DON'T know if you've heard, but Judge Sonia Sotomayor, President Obama's nominee to the Supreme Court, is Hispanic. She'd be the first to tell you. Though she might say "Latina," as in "wise Latina"—her apparent self-description. NATIONAL REVIEW's Richard Brookhiser pointed out that a truly wise Latina would never call herself that.

If you doubt the judge's extreme racial-ethnic self-identification, read her famous, or infamous, 2001 speech at Berkeley. It was published in the *Berkeley La Raza Law Journal* (cumbersome name). "La Raza," of course, means The Race. This lets you know what mindset is in play.

On every page of its website, the journal has a logo: a painting showing a march, with a banner at the front: "El pueblo unido jamás será vencido"—The People United Will Never Be Defeated. This is an old Allende-ist slogan and song. All of this is, again, redolent of a mindset, and it seems to be one that Sotomayor heartily shares.

In her speech, she talks about her "Latina soul," and her "Latina voice," and her "Latina identity"—over and over. She ends with the statement that she is "a Latina voice on the bench"—a statement that will leave you dizzy, if you think about it for long. What is a Latina voice on the bench, or a Dutch voice, or a Japanese voice, or an Irish voice? What does ancestry or ethnicity have to do with one's reading of the law? Justice is supposed to wear a blindfold; in the Sotomayorian worldview, it wears more a tribal symbol.

In the middle of her speech, Sotomayor takes an inventory—of female and Hispanic judges in various courts. She does this with the doggedness and specificity of old South Africa. "We have only 10 out of 147 active Circuit Court judges and 30 out of 587 active district court judges." She is speaking of "Latino representation," as she calls it. And she says that "we are waiting" for the appointment of "a second minority, male or female, preferably Hispanic, to the Supreme Court."

The speech is full of naked racialism, and nowhere does it get more naked than when Sotomayor goes "physiological": "Whether born from experience or inherent physiological or cultural differences . . . our gender and national origins may and will make a difference in our judging."

"Racialism" is the word, by the way—defined by a dictionary as "An emphasis on race or racial considerations, as in determining policy or interpreting events." That is not only Sotomayor's emphasis, it is also the emphasis of great swaths of America.

Leave Sotomayor to consider America's racial-ethnic gymnastics more generally. And begin with the words "Hispanic" and "Latino." They are critically important to all too many people. Basically, "Hispanic" refers to Spain, and the Spanish-speaking peoples worldwide. "Latino" refers to Latin Americans, only. The before-quoted dictionary has a usage note, which informs us that a "sociopolitical rift" has opened up "between *Latino* and *Hispanic* in American usage." Uh-oh.

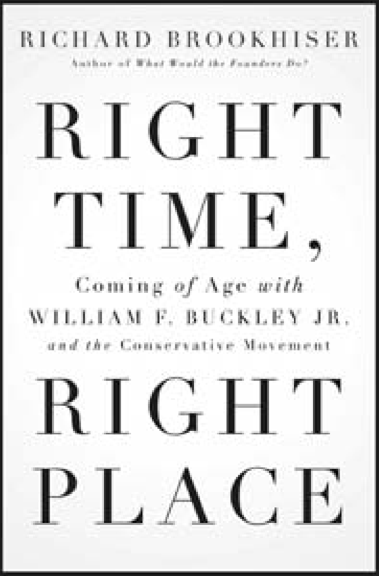
> For a certain segment of the Spanish-speaking population, *Latino* is a term of ethnic pride and *Hispanic* a label that borders on the offensive. According to this view, *Hispanic* lacks the authenticity and cultural resonance of *Latino*, with its Spanish sound and its ability to show the feminine form *Latina* when used of women. Furthermore, *Hispanic*—the term used by the U.S. Census Bureau and other government agencies—is said to bear the stamp of an Anglo establishment far removed from the concerns of the Spanish-speaking community.

Great, great. If you want to get deeper into the weeds, you can deal with "Chicano," which is used "only of Mexican Americans." And it is a word "with strong political associations"—i.e., you are probably a separatist, or at least not too hot on assimilation, if you call yourself that.

Indeed, "Hispanic," "Latino," and "Chicano" are not so much states of fact as states of mind. They have to do with the way you think, more than they do with objective conditions. If you value *E pluribus unum*, the melting pot, and Americanism at large, you can probably do without the ethnic labels. If you're more inclined to "diversity," "multiculturalism," and victimhood, well, those labels are for you. Some Americans have no use for a racial spoils system, or for race-consciousness at all. Other Americans sing of race with their every step. A middle group of Americans wants some measure of race-consciousness: They're just unsure how far to go.

Linda Chavez, the writer, is an old-fashioned liberal—and present-day conservative. She is a steadfast opponent of groupthink, and advocate of One America. For her troubles, she has had coconuts thrown at her. Get it? Brown on the outside, white on the inside. That is extreme abuse, practiced only by a few nuts (so to speak). But Chavez has had symbolic coconuts thrown at her too, as her critics have called her a false Hispanic, because of her views. In any case,

A MAN, A MAGAZINE, A MOVEMENT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she is not a Hispanic (or Chicana!) about whom one has to be "careful," much less "exceedingly careful."

Those are the words of Robert Gibbs, President Obama's press secretary, who said, "I think it is probably important for anybody involved in this debate to be exceedingly careful with the way in which they've decided to describe different aspects of this impending confirmation." And "confirmation" is the word—Judge Sotomayor will probably breeze up to the High Court. Similarly, Charles Schumer, the Democrat from New York, warned Republicans that they would "oppose her at their peril": You don't mess with Hispanics and their aspirations.

Funny, but there was nothing politically perilous about opposing Miguel Estrada. He was the brilliant young lawyer whom President Bush nominated for the D.C. Court of Appeals in 2001. Estrada had come to this country from Honduras at 17. Spoke barely a word of English. Seconds later, he was magna cum laude from Columbia, and seconds after that he was magna cum laude from Harvard Law. Had a sparkling career, impressing one and all. But the Democrats filibustered him, denying him a confirmation vote. They made him slink off in defeat.

Schumer said that Estrada was "like a stealth missile—with a nose cone—coming out of the right wing's deepest silo." If politics had been friendlier toward him, Estrada might one day have been the first Hispanic on the Supreme Court. But that honor will go to someone purer—someone lefter: Sonia Sotomayor. Was Estrada Hispanic at all? Or just a conservative, or assimilationist—or lawyer?

It is a mental thing. A few years ago, we learned something interesting from an affirmative-action case involving the University of Michigan Law School. According to court documents, a question had arisen in the school's admissions office: Should Cuban Americans count as Hispanics? An official said, "But don't they vote Republican?"

The same phenomenon hovers over black Americans, of course. In 1991, Judge Clarence Thomas was nominated to replace Justice Thurgood Marshall at the Supreme Court. Marshall had come from the "black bourgeoisie" in Baltimore; some of his family were so light, they could pass. Thomas had come from Pin Point, Ga.: no running water or electricity, Gullah instead of English, etc., etc. But was Thomas "black" enough to replace Marshall? A disturbing number of people, black and white—because black liberals had given white liberals permission—said no.

EL PUEBLO UNIDO JAMÁS SERÁ VENCIDO

I have a strong memory of a mayoral race in Detroit. It pitted Dennis Archer, a black Democrat, against Sharon McPhail, another black Democrat. McPhail was light-skinned, with freckles: and she essentially campaigned as the "blacker" candidate, stressing and damning Archer's acceptability to whites. In Newark, Mayor Sharpe James mocked his opponent, Cory Booker, as "neo-black": like Thomas, Colin Powell, and Condoleezza Rice, he said.

Speaking of Powell and Rice, one forgets that George W. Bush had only black secretaries of state. Race went almost entirely unremarked (making for a nice change). And, in Rice, you had a two-fer usually prized by liberals: a black woman. As former Maryland governor Robert Ehrlich once said to me in an interview, "If Condi Rice were a liberal Democrat, they'd have parades down Fifth Avenue for her, and she'd be on the cover of *Time* magazine every week."

Rice herself said something memorable at the 2000 Republican convention: that she was glad to belong to a party that "sees me as an individual, not as part of a group." Do Democrats ever say this? Would they like to?

Return to the Sotomayor speech for a moment: You may have noticed that she used the word "minority." Who are minorities? Jewish Americans, Korean Americans, Indian Americans (as in South Asia, not the rez)? In common parlance, no. "Minorities" is almost strictly a euphemism for blacks and Hispanics. You also often hear the phrase "minorities and women"—Sotomayor uses it herself in that speech. But must those women be left-minded, to be really and truly women? In last year's presidential campaign, there was a bumper sticker: SHE'S NOT A WOMAN, SHE'S A REPUBLICAN. The woman in question was Gov. Sarah Palin.

And I am reminded of a man in my hometown of Ann Arbor, Mich.—a very "progressive," and thus very race-soaked, place. While attending orchestral concerts, he toted up the blacks and women in the orchestra. Woe to you if there were too few. Could he not just listen to the music?

Americans, many of them, are great toters-up. I have written before about an illustrative moment in late 1992, during the presidential transition. A Clinton official dropped by the National Endowment for the Humanities, bearing a clipboard. His purpose was to check out the agency's female employees with Hispanic surnames. He wanted to ascertain whether they themselves were Hispanic or merely married to Hispanic men. But appearances can be deceiving—should he have insisted on blood samples, for DNA analysis?

Race is America's burden, and some people long to shuck it off—and believe that it can be shucked off, over time. But others work hard at keeping it firmly in place. Arthur Schlesinger Jr. had a melancholy phrase: "the disuniting of America," the title of one of his books. Now, he hated the Republican party as much as anyone could—as much as the National Council of La Raza possibly can. But he knew the dangers of disuniting, and the value of *E pluribus unum*.

The racialist mindset is bad enough in a banker, a golfer, or a waiter. In a Supreme Court justice? **NR**

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ELECTRONIC REPRODUCTION PROHIBITED

Regulated to Death

Obama's CAFE standards will prove bad for business and lethal for consumers

BY SAM KAZMAN

MAY 19 was a perfect day for a White House photo op. The sun was out, the Rose Garden was full, and everyone was smiling, even the CEOs of several automakers—which was ironic, because they were there to sign a suicide pact.

President Obama was unveiling, in his words, a "historic agreement"—a "harbinger of a change in the way business is done in Washington." The federal government's fuel-economy standards were being ratcheted up yet again, to 39 mpg for cars and 30 mpg for SUVs and other light trucks by 2016. That is one huge increase over the current standards, 27.5 and 23.1 mpg. And it is just latest turn in a decades-long saga known as Corporate Average Fuel Economy.

CAFE regulations were imposed in the wake of the 1973 oil embargo. They mandated gradual increases in the fuel-economy standards that new cars were required, on balance, to meet (i.e., not every new car had to meet the standards, but an automaker's fleet had to average out to the stipulated target).

Fuel economy has certainly improved since CAFE's enactment. The most rapid increase came in the decade after CAFE first took effect in 1978, when fuel economy for new domestic cars rose from 18 mpg to over 27 mpg. But rising gasoline prices also contributed, by stoking consumers' demand for vehicles that used less gas. A 2002 National Research Council study was unable to determine whether CAFE was the most important force, while Brookings Institution scholar Robert W. Crandall believes that gas-price increases accounted for nearly all of the improvement.

Higher CAFE standards are also touted as a way to reduce our dependence on foreign oil. The relationship may sound logical—use less gas, import less oil—but it's not borne out by history. CAFE standards rose in the 1980s, but so did our net dependence on foreign oil—from 37 percent in 1980 to 42 percent in 1990. In fact, our overall use of gas increased as well. There is a basic reason CAFE standards may have only a weak impact on oil consumption. Higher fuel efficiency reduces the marginal cost of driving—that is, the more miles per gallon your car gets, the less it costs you to drive each additional mile. So higher fuel economy may actually encourage more driving, and CAFE's impact on gas consumption may therefore be far weaker than its proponents claim.

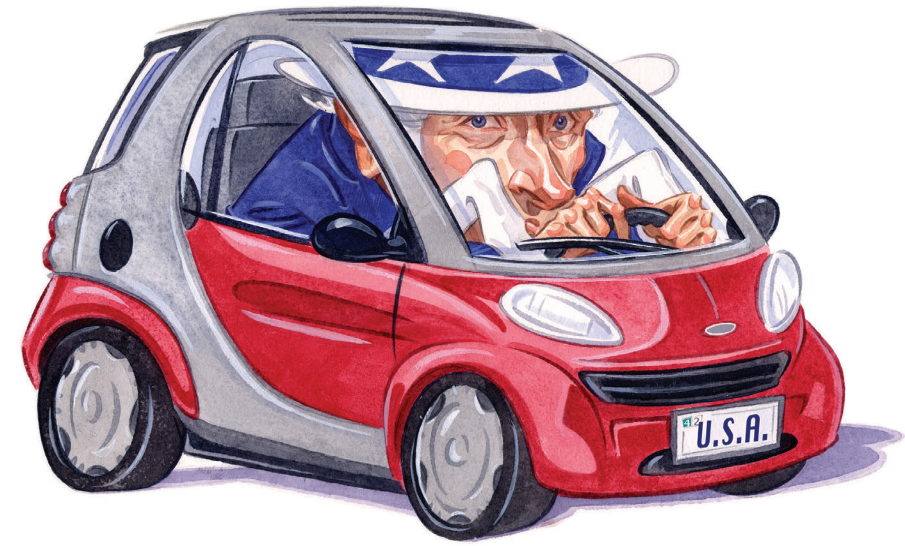
But CAFE does have some strong effects—such as increasing new-car prices and restricting the range of models available to the public. CAFE probably contributed to the demise of the full-size station wagon, which had low fuel economy. That, ironically, may have contributed to the rise of the SUV, an even less fuel-efficient model that fell into the less regulated "light truck" category.

And then there is CAFE's impact on safety. It restricts the production of larger, heavier vehicles, which generally get fewer miles per gallon than smaller, lighter cars. But they're also more crashworthy: They have more mass with which to absorb collision force, and more space in which occupants can safely decelerate (with the help of seat belts and air bags) before striking the car's interior. According to the National Research Council study, the 27.5 mpg standard—which was Congress's target when it initially enacted CAFE—contributed to about 2,000 traffic fatalities per year.

Since the regulations have been on the books for more than three decades, that adds up to a whopping death toll, one that CAFE's proponents have refused to admit. The agency that runs CAFE, the National Highway Traffic Safety Administration (NHTSA), has run into trouble over this issue. More than two decades ago, my organization, the Competitive Enterprise Institute, began challenging the NHTSA for refusing to factor safety into its deliberations when setting CAFE standards. In 1992, a federal appeals court agreed with us, and found that the agency, whose middle name is literally "Safety," had used "fudged analysis," "statistical legerdemain," and "bureaucratic mumbo-jumbo" to obscure the fact that one of its programs was killing people.

I naïvely thought this would spell the end of CAFE. After all, if a private manufacturer had produced something that caused a mere fraction of CAFE's carnage, it would long ago have been forced out of business. But I failed to appreciate just how different the rules of survival are for government projects. Not only did CAFE continue, but its requirements are now more stringent, and more lethal, than ever.

When industry and government shake hands over a product mandate, consumers had better run for the hills. President Obama promised that the costly technologies required under the new standards would rapidly pay for themselves in reduced gasoline costs, but he sounded like a used-car salesman. If these technologies were so great for consumers, then they'd be great for carmakers' bottom lines. In that case, they wouldn't need to be mandated by government.



DARREN GYGI

Mr. Kazman is general counsel for the Competitive Enterprise Institute, a Washington-based think tank.

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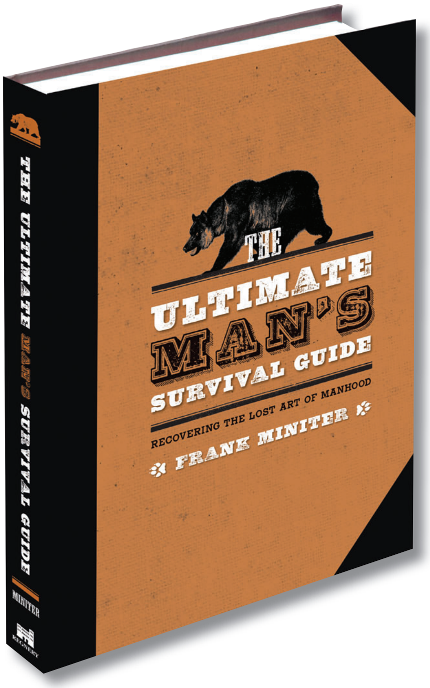
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But the auto industry did have one reason to celebrate. It was getting something that regulated industries will kill for: harmonization of regulations. For several years carmakers had faced the possibility that California and other states would impose more stringent fuel-economy standards than those at the federal level, under the guise of reducing carbon-dioxide emissions. California, however, had agreed to hold off temporarily on enacting its own standard, given the increased stringency of the new federal rule. The nightmarish scenario of having to meet different standards for different parts of the country was thus removed, at least for the time being. Instead of multiple nooses around its neck, the industry will have only one.

If you want to see how the industry is learning to live with that noose, consider General Motors's shifting stance on CAFE. Last June, in comments filed with the NHTSA, it warned that a 35 mpg standard might require the use of "expensive technologies . . . that consumers may not find acceptable—due to price concerns, drivability issues, loss of utility, and noise/vibration acceptance levels." And that was under the assumption that the 35 mpg standard would be in place by 2020, which would have allowed more breathing room than President Obama's target of 2016 does.

But in December, when GM filed its restructuring plan with Congress in a bid for bailout funds, those concerns were gone. Instead, GM offered a mea culpa: "GM has made mistakes in the past . . . [including] insufficient investment in smaller, more fuel-efficient vehicles for the U.S." And at the Rose Garden ceremony, GM declared that it was "fully committed" to the president's approach. So it is that an industry's commitment to consumers is being replaced by a commitment to government.

But for the government to achieve what it desires, consumers have to behave in a certain way, and there's no guarantee they will. Suppose they don't flock to the new cars—what then? They may well hold on to their old cars longer, which means that our on-the-road fleet could end up having lower fuel economy than if CAFE hadn't been changed at all. And that scenario will be even more likely if gas prices stay low, because then the public will have even less reason to sacrifice such things as comfort and safety in the name of fuel economy.

So we have a Bizarro World in which the auto industry may root for high gas prices because they make complying with CAFE easier, even though they also make driving more expensive. And government may well try to boost gas prices, given that its auto-bailout funds and regulatory scheme hang in the balance. Simply raising gas taxes would probably be too politically honest; voters would never accept it, and rightfully so. But a complicated cap-and-trade approach, such as that contained in the new Waxman-Markey climate bill, might be politically viable. It would boost gas prices, avoid getting labeled a tax, and be good for the Earth all at once. What could be better?

There was a disturbing but largely unreported prelude to the White House event. A week before the ceremony, Charles A. Hurley, who had been nominated by the president to head the NHTSA, withdrew his name. What reportedly killed his nomination was his work for the Insurance Institute for Highway Safety, which is perhaps the last industry group to recognize the tradeoff between CAFE and vehicle safety publicly.

Making use of decades of auto-crash data, the Institute has long advised consumers on the importance of size and weight in car safety. It drove the point home again last April, by releasing a report on a series of mini-car test crashes in which the vehicles performed significantly worse than mid-size cars.

But well-founded as it was, Charles Hurley's view on CAFE and safety was too much for environmentalists. They have never admitted the tradeoff in the past, and now they apparently will go gunning for anyone who does. Dan Becker, former head of the Sierra Club's global-warming program and reportedly a key player in killing Hurley's nomination, said: "I'd rather talk about the future than . . . kick a dead horse. This gives the Obama administration the opportunity to choose someone who is committed to both sides of NHTSA's jurisdiction—safety and fuel economy." So much for the laws of physics.

Hurley's fate provides an Orwellian contrast to President Obama's recent claim that "under my administration, the days of science taking a back seat to ideology are over." Science taking a back seat to ideology? Buckle up, you ain't seen nothin' yet. **NR**

Cuban Hopes

The people find their voice—but will the world help the Castros silence it?

BY OTTO J. REICH & ORLANDO GUTIERREZ

In the 1980s, most American foreign-policy experts and intelligence analysts failed to see the internal changes taking place in the Soviet bloc as serious challenges to the regimes. Could history be repeating itself closer to home, this time in Cuba?

After 50 years of living under the most repressive dictatorship in the Western Hemisphere, the Cuban people are losing their fear and beginning to push off the Communist boot from their collective neck. Paradoxically, this is happening as a dark cloud of authoritarian populism spreads throughout Latin America, financed by Hugo Chávez's petrodollars, undergirded by Castro's intelligence and security infrastructure, and propelled by years of incompetence and selfishness on the part of political elites. Democratic change in Cuba, long deemed an impossibility, could turn the tide and usher forth a rebirth of freedom in the region.

An uncommon sound was heard throughout three Cuban cities in early May of this year: pots and pans being banged in protest over political and economic conditions on the island. The protest was as unusual as the way in which it was organized: An incipient movement of young bloggers used their limited access to the Internet—the Cuban government severely restricts access to computers and the Web—to call on the population to carry out the protest.

A few weeks earlier, on March 29, at the annual Havana Arts Festival, some of these same bloggers, together with young artists, had taken the stand during

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a presentation and proclaimed an "open podium"—calling on the hundreds of onlookers and participants to express themselves freely. Many did, openly and courageously mocking government censorship.

These reports are unusual because any anti-government protests in Cuba have traditionally been met with furious physical attacks by police and government-organized "rapid-response brigades" of local goons armed with iron bars and other blunt instruments. In these recent cases, however, the rapid-response brigades have not been effective: The citizens have responded with passive, but consistent, resistance.

At a government-sponsored concert a few weeks before the Havana Arts Festival, many youths had openly protested the arrest of Gorki Aguila, leader of a punk-rock band known for its obscene lyrics and no-holds-barred critique of the Castro regime. The Castros' gerontocratic ruling clique is attempting to maintain total control over a nation whose population averages less than half its age.

In the town of Placetas, in the central part of Cuba, lives 44-year-old Jorge Luis García Pérez, also known as "Antúnez," a black Cuban who served 17 years in prison for calling for glasnost and perestroika on the island. Antúnez has been called "the Black Diamond" by his fellow prisoners, for his tough resistance to the dictatorship and in reference to the color of his skin. He has organized meetings, marches, fasts, and vigils in a crusade to mobilize a nonviolent civic movement for change, and he recently went on a hunger strike to draw international attention to the plight of Cubans.

Antúnez has reasons to be hopeful. The Castro regime itself has recognized that it cannot extinguish what it calls "indisciplina laboral," or rampant worker non-cooperation with the regime's command-and-control apparatus. What's more, after a grassroots campaign by activists throughout the island, more than 1.5 million Cubans of voting age refused to cooperate with the sham one-party, one-candidate "elections" organized by the government in January 2008 in order to "legitimize" the passing of presidential power from Fidel Castro to his younger (by almost five years) brother, Raúl. Never before had Cubans in such large numbers dared to defy the rigidly enforced order to vote. For the first time in half a century—because of this innovative campaign, carried out with fasts, public protests, workshops, Internet postings, leafleting, and programs on short-wave radio—citizens were galvanized into rejecting sham elections.

Since the March 18, 2003, crackdown that landed 75 civic activists and leaders in prison, the resistance movement has developed innovative ways of expanding the struggle for freedom, including the founding of groups such as the Rosa Parks Women's Movement for Civil Rights, underground independent newsletters, and even citizen committees against police abuse. The movement grows, fueled by increasingly open popular discontent.

A number of U.S. congressmen and foreign governments are pressuring the Obama administration to accelerate U.S. diplomatic approaches to Cuba regardless of the action—or inaction—of the dictatorship. The result of following this misguided suggestion would be to undermine the growing dissident movement on the island and delay the day when democracy and freedom can return. The resilient civic resistance movement that has flowered in Cuba presents a constant challenge to a once all-powerful totalitarian regime. Unarmed but persistent, these nonviolent resisters represent a positive alternative future for Cuba.

Nor is frustration with the current government limited to the young and anonymous. In March, some of the most powerful people in the government—including Carlos Lage, a key economic official, and Felipe Pérez Roque, the foreign minister—were summarily removed from their posts. Their future is being debated at the highest levels, including within the Politburo, the Communist party's policy-making body, from which they were also expelled. Their crime: having been secretly tape-recorded mocking Raúl and Fidel Castro's incompetence (and, in the case of Fidel, incontinence), as well as the advanced age of the ruling clique. Furthermore, they could be heard hoping for the day when a younger generation could rule. The political significance of the demotion of formerly trusted, high-ranking leaders of the next generation of the island's rulers must not be underestimated.

> The U.S. should draw attention to the courageous Cuban civil resistance and insist that nations that engage Castro not turn their backs on these non-violent freedom fighters.

A dialogue with the Castro government that ignored the growing dissidence and despair at all levels of Cuba would be as counterproductive as would have been ignoring Lech Walesa in 1980s Poland and addressing only General Jaruzelski. The U.S. should instead draw attention to the courageous Cuban resistance and insist that nations that engage Castro not turn their backs on these freedom fighters. In this decade, too many European embassies in Havana (most of them from "Old Europe") have, under pressure from the Castro regime, stopped even inviting dissidents to diplomatic functions. Fortunately, the Eastern European states have not followed suit, since they remember what it is like to live under a Communist dictatorship, and how important it is for dissidents to know they have friends on the outside.

It is said that "generals are always ready to fight the last war," because they fail to recognize the changes that follow it. The same may be said about diplomats and politicians who are calling for commercial and diplomatic engagement with Castro's Cuba. They are ready to talk to a government that does not represent the future of Cuba—or even its present.

But perhaps they cannot be blamed. After all, when was the last time that the U.S. or international mainstream media reported the events described above? **NR**

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Undue Deference

The wisdom of opposing Sotomayor

BY RAMESH PONNURU

Charles Krauthammer said it better than they would have said it. But a lot of Republicans were surely nodding in agreement as they read the columnist's argument that they should vote to confirm Sonia Sotomayor "*solely* on the grounds—consistently violated by the Democrats, including Senator Obama—that a president is entitled to deference on his Supreme Court nominees, particularly one who so thoroughly reflects the mainstream views of the winning party. Elections have consequences."

On that last point, Krauthammer is all too correct. Among the doleful consequences of our last elections is that our future is highly likely to include "Justice Sotomayor." The question is whether Senate Republicans, who were also elected, should be complicit in her elevation. "No" is a reasonable answer to that question.

President Obama has the constitutional power to nominate whomever he likes to the Supreme Court. But it is not as though he had a mandate to promote liberal activism on the bench. Sotomayor's confirmation could play an important role, for example, in the invention of a federal constitutional right to same-sex marriage. Yet Obama did not campaign on any such platform. He campaigned instead as an opponent of same-sex marriage. Even if the public knew that his judicial appointees were likely to expand felons' rights to vote, restrict the use of the death penalty, require more generous treatment of terrorist detainees, and so forth—a dubious proposition—it is implausible that it voted for him *because* of those issues.

And even if the public had voted on that basis, Republicans would be bound to ask whether a vote for a liberal justice furthered their duty to safeguard the Constitution. If election results nullified that duty, there would be little point in having a Constitution.

As for deference to the president, it is a political norm rather than a constitutional requirement. There are good reasons for a well-working constitutional order to adopt and maintain that norm. If judges could generally be trusted to respect the proper limits of their authority, then so long as the president's nominees had displayed competence and integrity senators would be right to give their consent to the nominations.

Even in that situation, senators would expect to disagree with the nominees from time to time. On the bench the nominees might make mistakes, or confront cases that demanded close calls. Sometimes those close calls would concern matters that divide the parties, and opposition senators might have special reason to worry about how the president's nominees would decide them. But senators would not fear that the nominees would routinely exceed their constitutional authority. Bringing partisanship to the confirmation process, on the other hand, might undermine this happy state of affairs. It might make it seem as though the rule of law took a back seat to party politics. To avoid this risk, and in the interest of comity, senators would have good reason to vote for the president's nominees almost all the time.

In part because of these considerations, Republicans have for many years argued for senatorial deference to the president on judicial nominations. They have also favored a set of related norms. The nominee's judicial philosophy, they have sometimes said, should generally not affect a senator's vote on confirmation: A president is entitled to a nominee who shares his judicial philosophy, unless that philosophy is "out of the mainstream." Senators, further, should feel circumscribed in the questions they can legitimately ask. Any questions about judicial philosophy should stay at a high level of abstraction. Senators should not

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The Deadly Threat of a Nuclear-Armed Iran

What can the world, what can the USA, what can Israel do about it?

Iran's president, Mahmoud Ahmadinejad, has declared publicly – not once, but repeatedly – that Israel must be "wiped off the map." That effort, the destruction of Israel, seems to be the main goal of Iranian policy. When Iranian missiles are paraded through the streets of Tehran, the destination "to Jerusalem" is clearly stenciled on them.

What are the facts?

A death wish for Israel. Ahmadinejad and the ayatollah who is the "supreme leader" have publicly mused that one or two nuclear bombs would obliterate Israel, but that, though it would cause devastating damage and millions of casualties, Iran would survive Israel's retaliatory attack. Iran is a huge country, with about 60 million inhabitants, so they are probably correct. And who can doubt that those religious fanatics would not hesitate to allow the destruction of much of their country and to sacrifice a third or even one-half of their population in order to eliminate the hated Jewish state. When our country was entangled with the Soviet Union in the bitter 40-year long "cold war," with both sides having sufficient nuclear weapons to destroy the opponent's country and its people, things were kept in place by MAD – Mutually Assured Destruction. However "evil" the leaders of the Soviet Union (the "Evil Empire") may have been, there was one great consolation and assurance: They were not crazy. But the Iranians and other Muslims are crazies, as we understand the concept. Because they take instructions directly from Allah, who tells them to kill the Jews and other infidels, whatever the cost.

> "An attack on the Iranian nuclear installations would fall under the heading of "anticipatory self-defense," recognized and sanctioned by international law and by common sense."

Israel has no problem with Iran. They share no borders and have no territorial dispute. In fact, they face common Arab enemies and should be natural allies, as they indeed were under the Shah. Iran's death wish for Israel is based entirely on religious fanaticism. In contrast even to the intractable North Koreans, the determination of the Iranians is immutable. It cannot be changed by persuasion, by diplomacy, by sanctions or by threats.

Once Iran is in possession of nuclear weapons, it will not only be a deadly danger to Israel, but to all of the Middle East and to virtually all of Europe. The flow of oil from the Middle East, the lifeblood of the industrialized world, would be totally under its control and so would be the economies of all nations of the world, very much including the United States.

What is to be done? In 1981, then prime minister of Israel Menachem Begin, being aware of Iraq's nuclear ambitions and looming realization of those ambitions, decided that its nuclear reactor at Osiraq had to be destroyed. The IAF (Israeli Air Force) accomplished that in a daring and unprecedented raid. Iraq's nuclear capability was eliminated in one stroke, never to rise up again. Israel had done the world an enormous service. Had it not been for Israel's decisive action, the Iraqi conquest of Kuwait and, without question, also of Saudi Arabia and its enormous oil fields, and, for that matter, of Iran, could not have been prevented. Saddam Hussein would have been the ruler of the world.

The solution to the deadly threat that Iran poses to the world is obvious. Of course, diplomacy and persuasion, threats and promises, sticks and carrots – every possible means short of military action – should be used until it becomes clear even to the most obdurate that nothing can deviate Iran from its chosen path of becoming a nuclear power and to dominate the Middle East.

There is reason to believe that the people of Iran, especially the young people, oppose the oppressive and theocratic regime of their country and are hostile to the mullahs who control everything. But the government has the tools of power firmly in its hands. It controls the instruments of coercion – it can kill people and it controls the oil money. While it would be most desirable and in the interest of the world to be able to foment an overthrow of the Iranian regime, that is an unrealistic and unattainable prospect.

Regrettably, there is only one solution to the terrible dilemma confronting the world, the unacceptable danger of a nuclear-armed Iran. The terror, the destruction and the 60 million dead of World War II could have been prevented at several times during the Nazi regime. But the Allied powers, under the leadership of Britain's prime minister Neville Chamberlain, opted for appeasement and for "peace in our time." We cannot afford to make that same mistake again. The world must give Iran an ultimatum: Desist immediately from the development of nuclear weapons; if you do not, we shall destroy the facilities that produce them. There still is a window of opportunity to do that. That window may close very soon. But who would do the job? The United States would be the obvious choice. But if the United States were in accord, Israel could do it, just as it did the job in 1981 in destroying Iraq's nuclear potential once and for all.

An attack on the Iranian nuclear installations would fall under the heading of "anticipatory self-defense," recognized and sanctioned by international law and by common sense. Nobody really knows for sure how far Iran is from reaching its goal — six months. six years? The experts disagree. But if Iran is not stopped now, it may well be too late not very long from now.

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109

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inquire how a nominee interprets particular constitutional provisions. If a senator goes over the line in his questioning, the other senators should excuse the nominee for not answering.

Widespread adherence to these norms is helpful for whichever party holds the presidency. Thus Republicans were especially devoted to them during the Bush administration, even though their advocacy of the norms does not appear to have swayed many people who were not already disposed in favor of Bush's nominees. But Republicans did not adopt them purely because of partisanship: A large majority of them voted for both of President Clinton's Supreme Court nominees because they thought they should defer to him. They never dreamed of filibustering either nominee, as Democrats, including then-Senator Obama, attempted when Bush nominated Samuel Alito.

The main flaw with these norms—deference to the president, limited questioning, voting without reference to judicial philosophy—is that they presuppose a self-limiting judiciary that does not exist. Our actual system of governance has for decades featured a routinized, and mostly liberal, judicial activism.

Today's courts manage prisons and school districts. They decide how we may control our borders, whether we may adopt school choice, and under what circumstances we must tolerate euthanasia. They make authoritative pronouncements about the psychology of schoolchildren and the motives of legislators. The justices of the Supreme Court have far more discretionary power than any nine senators do.

Our legal culture questions none of this judicial rule. Instead it pulls judges without strong contrary convictions into the embrace—first practical, then formal—of this (again, mostly liberal) judicial activism. Conservatives rail against some judicial decisions and applaud others. They applauded, a few years ago, when the Court upheld school vouchers on a 5–4 vote. But hardly anyone mounts serious resistance to the idea that it should have been within the Court's power to strike them down.

That is another way of saying that judicial power faces few checks. In large part that is because its rise has been accompanied by the spread of protective political ideas. Once the courts have finished their handling of a case, their decision is taken as binding and final. Other branches of the government are widely assumed to be obligated to treat their decisions as correct. If the federal courts have ruled on a constitutional matter, Congress cannot overrule its decision by statute, and many people think it is improper for Congress to exercise its authority to withdraw jurisdiction from the courts by statute. States have even less leverage against the federal courts. Impeachment is considered out of bounds as an answer to judges who overstep their bounds.

The remaining checks on the federal courts are weak. Constitutional amendments have been proposed to undo the effects of some court decisions, but they are by design impossible to enact without the support of supermajorities of the public. If an erroneous Supreme Court decision has any political constituency behind it at all, an amendment will not correct it. Opponents of a decision may try to elect presidents who will name judges who will overturn it. But the possible slips between cup and lip are too numerous to count.

We may try to persuade the justices to change their minds. But if our attempts include vocal criticism of their decisions, we may find ourselves condemned as threats to judicial independence. The justices might claim that this same independence requires them to refuse to reconsider their mistakes. (See *Casey* v. *Planned Parenthood* or *Dickerson* for examples.)

The norm of deference further weakens the few weak checks on judicial power we still have. Senators who adopt it are voting to grant vast and essentially unreviewable power to a nominee regardless of the uses to which he will put that power—and often while refusing in principle to get as much information as possible about those uses. Making sure that nominees are in the "mainstream" of the contemporary legal culture compounds rather than mitigates the problem, since that legal culture is entirely comfortable with the enhanced power of lawyers (and far more so than the general public is). An in-the-legal-mainstream test will tend to screen out opponents rather than proponents of judicial rule. Robert Bork wasn't in the legal mainstream; Ruth Bader Ginsburg, the ACLU's lead litigator, was.

JUDGE SOTOMAYOR is in the legal mainstream, too, albeit on the left edge of it. The case for voting her down is not that she is a particularly egregious judge. It surely has nothing to do with her much-discussed "identity" as (take your pick) a pathbreaking Latina or a racial extremist. It is, rather, that she would take us farther away from democracy, the rule of law, and the Constitution. So would nearly anyone else that this president would have picked.

The president has infamously said that his nominees would be selected for their "empathy" toward single mothers, gays, and other groups. During the presidential campaign he said at least twice that his nominees would also support *Roe* v. *Wade*. That decision was a supreme act of activism: The right it announced had no mooring in the text, history, structure, or logic of the Constitution. There are those who say that the decision has been on the books for so long that it ought to stay: that its precedential force trumps its unconstitutionality. But to commit in advance to stick with it—and unless Obama lied, she has made that commitment, if only by wink or nod—is to show indifference to its offenses against self-government. That indifference will surely carry over to other areas of adjudication.

Her defenders deny that she is a liberal activist, but they have almost nothing to work with in building that case. They say that in some decisions she has sided with businesses, in others with pro-lifers, and in many with precedent. This defense sets the bar for being cleared from the charge of activism very low indeed. In cases involving the right to confront one's accusers, Justice Antonin Scalia sides with criminal defendants. Will Sotomayor's defenders call him a moderate too? The only thing this defense really establishes is that Sotomayor does not indulge in liberal activism when she is sure to be overruled and set back in her career. Neither constraint will apply when she sits on the Supreme Court.

It is not within the power of Republican senators to keep her off the Court. It is, however, within their power to register their disapproval of the way the Supreme Court's constitutional law has drifted farther and farther away from the Constitution on which it is supposed to be based. Republicans should highlight those decisions of hers that put her tendency to abet that drift in stark relief. They should not allow themselves to be sidetracked into discussions of Judge Sotomayor's racial views or, even more, her intellect. Debate on those topics will not help them make the case for constitutionalism. Neither will "yes" votes. **NR**

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The Supreme Court should scrap an antiquated and unconstitutional rule

BY ABIGAIL THERNSTROM

In the summer of 2006, with hardly a dissenting vote, Congress extended and strengthened the most radical provision of the 1965 Voting Rights Act for a quarter century. That provision—Section 5—was originally supposed to expire in 1970. In 1965, it was considered too constitutionally doubtful to be given a longer life. Forty-four years later, it is still going strong, having been repeatedly extended.

The ink was barely dry on the 2006 amendments when a tiny Texas utility district challenged their constitutionality. Section 5, the district argued in *Northwest Austin Municipal Utility District No. 1* v. *Holder* ("*NAMUDNO*"), "strikes at the heart of federalism, injecting the federal government directly into the state and local legislative process"—and does so on the basis of obsolete data.

Striking "at the heart of federalism" had been precisely the purpose of Section 5 in 1965. The Voting Rights Act enfranchised southern blacks by intruding on states' traditional right to set their own election procedures. It suspended literacy tests (usually fraudulent) and provided federal registrars and observers, when necessary, in states and counties that statistical criteria had identified as racially suspect. The criteria were reverse-engineered: The framers of the act knew they wanted to target the South and designed a test that would do so.

Section 5 prevented those southern jurisdictions—called "covered"—from instituting any new voting procedure without federal approval (known as "preclearance"). Only changes that were shown to be nondiscriminatory could be "precleared." State and local laws are usually presumed valid until found otherwise by a court, but the statute switched the burden of proving innocence to the defendant—the jurisdiction seeking preclearance of a voting change. It was required to prove a negative—an *absence* of discriminatory intent or effect.

The preclearance provision thus, in effect, put the conduct of elections in the South under federal receivership. Section 4 of the act banned literacy tests; Section 5, by requiring approval of every change in the method of elections in covered states, made sure the effect of that ban stuck. It was intended as a prophylactic measure—a means of guarding against new efforts to stop blacks from exercising their Fifteenth Amendment rights.

Distrust of southern state and local election processes, in other words, was the foundation upon which Section 5 was built. At the time, the great liberal Supreme Court justice Hugo Black expressed grave constitutional doubts about states' being "compelled to beg federal authorities to approve their policies," but he was from Alabama, and southerners came to the argument with dirty hands. In the context of the time, nothing short of overwhelming federal power would have destroyed the Jim Crow South. Southern whites feared black enfranchisement; they knew that white supremacy and black subordination could not last once blacks had the ballot—as indeed it turned out.

By now, racist registrars and fraudulent literacy tests have gone the way of segregated water fountains. But the act as subsequently amended betrays no awareness of this remarkable revolution in racial attitudes and laws; indeed, in passing the amendments of 2006, Republicans and Democrats alike accepted the argument offered by civil-rights advocates, and included in a House Judiciary Committee Report, that discrimination has just become "more subtle" than it was in 1965. Minority voters are still prevented from "fully participating in the electoral process."

Rarely in the rich annals of congressional deceit and self-deception have more false and foolish words been written, and in filing its suit in *NAMUDNO*, the Texas utility district in effect called both the rhetoric and the vote shameful. "As reenacted in 2006, §5 . . . [locks] in place the legislative judgments of the 1960s, rather than reflecting any fresh analysis of where §5's extraordinary remedy might be needed today, if anywhere," a brief for the district argued. "That portrayal unfairly demeans current residents of all races in covered jurisdictions and diminishes both the progress our country has made and the gravity of the evils the civil-rights movement fought to overcome. . . . [Congress has treated] racism as an inheritance that runs with the land rather than a manifestation of attitudes and actions of living individuals."

Judge David Tatel, writing for the D.C. district court where the case was first heard, rejected the district's constitutional argument, concluding "that given the extensive legislative record documenting contemporary racial discrimination in voting in covered jurisdictions, Congress's decision to extend Section 5 for another twenty-five years was rational and therefore constitutional."

The cumulative House record compiled in 2005–06 offered a blizzard of anecdotes as evidence of ongoing voting discrimination and inadequate electoral opportunity in America today. "I don't understand, with a record like that, how you can maintain as a basis for this suit that things have radically changed," Justice David Souter said to Gregory Coleman, representing the district, at the oral argument. The examples, Coleman pointed out, were of problems that could be fixed through the enforcement of the Fourteenth Amendment or Section 2 of the statute—a provision that is not otherwise relevant to the case.

Congress collected more than 12,000 pages of testimony and other documents filled with stories of alleged discrimination, accompanied by some statistics on voter participation, minority officeholding, and the DOJ preclearance record. But the mountain of evidence fell far short of painting a picture of widespread and egregious discrimination even vaguely reminiscent of the kind that was common in the Jim Crow era. Anecdotal accounts included changes in the location of polling places, "often on short notice"; voters "forced to cast votes outside

Abigail Thernstrom, an adjunct scholar at the American Enterprise Institute and the vice chair of the U.S. Commission on Civil Rights, is the author of Voting Rights—and Wrongs: The Elusive Quest for Racially Fair Elections, *which has just been published by the AEI Press. She is also the co-author, with Stephan Thernstrom, of* America in Black and White: One Nation, Indivisible.

of the voting booth . . . because there was no room available"; and so forth. The charges were splattered across the pages of testimony as if they spoke for themselves. Was there no room in the polling place because an unprecedented number of voters showed up, and, if so, how common had that problem been? Was anyone kept from casting a ballot? Most important, was the experience of voters in, say, Alabama notably different from that of voters in Ohio? Were the stories of discrimination qualitatively different from those that were heard in 2000 about Florida counties that were *not* covered by Section 5?

At the oral argument, Justice Anthony Kennedy questioned the Justice Department's deputy solicitor general: "Congress has made a finding that the sovereignty of Georgia is less than the sovereign dignity of Ohio. The sovereignty of Alabama is less than the sovereign dignity of Michigan. And the governments in one are to be trusted less than the governments [in] the other. . . . Does the United States take that position today?"

Kennedy's vote will likely be decisive, and his question sent panic rippling through the civil-rights community. He had pointed out the obvious: Discrimination in the South today was not just "more subtle" than that in 1965.

Section 5, initially designed as a shield against southern racism, rather quickly turned into a sword to ensure a 'racially fair' distribution of political power.

In 1954, the Supreme Court had signaled the end of Jim Crow in *Brown* v. *Board of Education*. Ten years later, in almost every southern state, only a minority of blacks were able to cast a ballot. Disfranchisement was particularly acute in Mississippi and outside of major urban areas. Today, most southern states have higher black registration rates than those outside the region, and more than 900 blacks hold public office in Mississippi alone. Between 1970 and 2002, the number of black elected officials in the seven southern states originally covered by Section 5 jumped from 407 to 4,404, nearly double the rate at which black representation increased nationwide. Covered and noncovered states in the South are almost indistinguishable by the measure of blacks elected to state legislatures.

The utility district, in making its case, focused primarily on the unjustified violation of principles of federalism. "Changed conditions . . . make §5's continuation indefensible. . . . No evidence in the 2006 record justifies keeping long compliant jurisdictions in federal receivership for another quarter-century," its brief argued. There was another constitutional issue, however, that it touched on only very lightly. Section 5, it noted, "is regularly interpreted to require gerrymandering to create or maintain majority-minority voting districts. . . . These practices not infrequently result in unconstitutional racial gerrymanders."

The racial gerrymanders to which the brief referred were remedies for districting maps of which the Justice Department disapproved. The interpretation of Section 5 had morphed over time in an unanticipated direction—a change that had both benefits and costs. The original act had been animated by a vision of racial equality in the American polity: blacks free to form political coalitions and choose candidates in the same manner as other citizens. But it soon became clear that—after centuries of slavery, another century of segregation, ongoing white racism, and persistent resistance to black political power—equality could not be achieved simply by giving blacks the vote.

Thus, Section 5, initially designed as a shield against southern racism, rather quickly turned into a sword to ensure a "racially fair" distribution of political power. "Racially fair" meant representation in proportion to the minority population, which in turn demanded race-conscious maps that often contained districts described as "bug splats."

The 1965 act's ultimate aim was political integration—and it succeeded: Racially gerrymandered districts integrated southern legislative bodies, from school boards to congressional delegations. Over time, however, the costs of such race-consciousness became increasingly apparent, and in the 1990s, the Court began to consider the serious Fourteenth Amendment questions raised by such racial sorting and racial stereotyping. As Justice Sandra Day O'Connor noted in 1993, federally imposed race-based districting was "an effort to 'segregate . . . voters' on the basis of race," which stigmatized "individuals by reason of their membership in a racial group." Segregation marginalizes voters.

Today, therefore, the act may serve as a brake on black political aspirations and a barrier to greater integration. While the country has moved consistently, if unevenly, toward racial integration, the law has arguably created a black legislative class too isolated from mainstream politics. Blacks elected from safe minority districts do not develop the skills necessary to win in a racially mixed setting, and, perhaps as a consequence, few members of the Congressional Black Caucus have run for statewide office and none have moved from the House to the Senate.

In deciding *NAMUDNO*, the Court could allow the utility district to "bail out" from Section 5 coverage—relief to which it is entitled, it has argued, although the conventional reading of the statute suggests otherwise. But if the Court is inclined to address the large and serious issue of Section 5's constitutionality in a racially transformed America, it should take up the gerrymandering issue. The 2006 amendments actually increased the pressure on covered jurisdictions to engage in race-based districting. Can the Court turn a blind eye to the constitutional damage done by irresponsible congressional action that goes far beyond the renewal of a provision no longer justified by southern racial hostility?

If the Court lets Section 5 stand, it will be rejecting some rare wisdom from Justice David Souter. "Minority voters are not immune from the obligation to pull, haul, and trade to find common political ground, the virtue of which is not to be slighted in applying a statute meant to hasten the waning of racism in American politics," he wrote in 1994. As the preclearance provision has been interpreted and refashioned, blacks have too little incentive to "pull, haul, and trade." They are treated as politically helpless wards of the federal government.

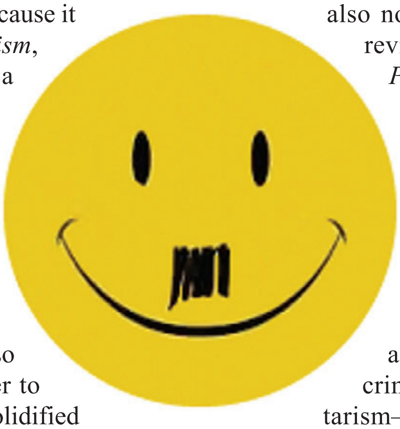
Surely that is not in the interest of any Americans, whatever their color. **NR**

Obama's Playbook,

IN PAPERBACK

Liberal Fascism *and its critics*

BY JONAH GOLDBERG



'IN the greatest hoax of modern history, Russia's ruling 'socialist workers party,' the Communists, established them selves as the polar opposites of their two socialist clones, the National Socialist German Workers Party (quicknamed 'the Nazis') and Italy's Marxist-inspired Fascisti, by branding both as 'the fascists,'" writes Tom Wolfe. "This spin of all spins," he says, has played "havoc" upon Western political discourse ever since. I'm fond of that insight not only because I agree with it, or because it is from a blurb for my book *Liberal Fascism*, which has just come out in paperback (with a new afterword on Barack Obama, who fits so seamlessly into my thesis that he reminds me of the replacement shark in *Jaws II*). I repeat Wolfe's pithy summation of the knot I tried to cut because it helps explain the liberal response to the book. The initial reaction—or pre-reaction, since *Liberal Fascism* was attacked several years before it came out—was simply to declare its thesis so absurd that no serious person should bother to crack its spine. The "spin of all spins" had solidified into conventional wisdom among mainstream liberals, and questioning it amounted to secular heresy.

Some liberals tried to debunk the book more systematically, but for the most part they just confirmed that the "spin of all spins" was exactly that. Consider University of Texas historian David Oshinsky's review for the *New York Times*. He began by quickly summarizing the main points of my argument: The Left uses the term "fascist" to demonize its enemies; fascism was a left-wing phenomenon; Mussolini was a socialist; American Progressivism was disturbingly fascistic, and FDR's New Deal had fascistic elements as well. Only when he reached this last point did Oshinsky offer a clear dissent, writing, "Goldberg is less convincing here because he can't get a handle on Roosevelt's admittedly elusive personality." Well, okay. But I don't get to Roosevelt for more than 130 pages, at which point I've already overturned the liberal applecart. It was a remarkable concession.

A more thorough effort—and an omnibus of left-wing desperation—appeared in *The New Republic*, from journalist Michael Tomasky. He too assured readers that they didn't need to bother with "one of the most tedious and inane—and ultimately self-negating—books" he'd ever read. But then he picked up a new argument, which subsequently became popular with critics on the left: We knew all this before. Tomasky insisted, for instance, that "we all understand that Mussolini showed little to no interest in oppressing Jews until quite late in his career." Everyone was already well aware, Tomasky wrote, that Wilson was a would-be fascist and that "the Nazi program was in some respects a left-wing program. . . . It was not called National Socialism for nothing." Liberals should be congratulated for keeping all of this so tightly under wraps for so long.

Tomasky also compared apples to apples to prove that one of them was an orange. Guffawing at my argument that Hitler was a "Man of the Left," he observed that one of the first things Hitler did was crack down on independent labor unions. True enough, the Nazis rolled them up into the German Labor Front (DAF—from its German name, "Deutsche Arbeitsfront"). The Nazis defended the DAF by arguing that it gave labor a seat at the table of government (a frequent demand from progressives to this day, and one satisfied, in part, by an outcome not all that dissimilar to the DAF: the UAW's joint ownership, with the U.S. government, of GM). Whether that defense was true is a worthy debate topic, but either way Tomasky's example does not serve his critique. After all, how did independent labor unions fare under Stalin? Mao? Castro? Are these men also not of the Left? Sociologist Michael Mann, reviewing *Liberal Fascism* in the *Washington Post*, wrote, "What really distinguished fascists from other mainstream movements of the time were proud, 'principled'—as they saw it—violence and authoritarianism." If you say so. But again: How opposed to violence and authoritarianism were Messrs. Stalin, Mao, and Castro? Time and again liberals take an aspect of Nazism and say, "This proves Nazism was right-wing." On almost every count—genocide, racism, discrimination, suppression of free speech, militarism—the most famously left-wing regimes in history have acted in identical fashion. But the actions of those regimes are deemed irrelevant, whereas the actions of Nazis are taken as proof of the right-wing nature of Nazism.

Which invites the most basic question: Since when is violence, or racism, or authoritarianism, inherently right-wing—particularly in the sense of the Anglo-American Right? Tomasky, Mann, and the rest prove the continuing truth of George Orwell's observation in 1946 that fascism had come to mean "anything not desirable."

OTHER critics argued that, while it's true there were progressive aspects of fascism, there are no fascistic aspects of progressivism. Here is Mann again: "[Goldberg] is right to note that fascist party programs contained active social welfare policies to be implemented through a corporatist state, so there were indeed overlaps with Progressives and with New Dealers. But so, too, were there overlaps with the world's Social Democrats and Christian Democrats, as well as with the British Conservative Party from Harold Macmillan in the 1930s to Prime Minister Ted Heath in the 1970s, and even with the Eisenhower and Nixon administrations. Are they all to earn the f-word?"

Yes and no. One of the book's main points, stated again and again, is that fascism was not some obscure outlier among ideologies. It was mainstream, and part of the general fad for collectivism and statism. That a bipartisan political class looked favorably on fascism in the 1920s, and that from the 1930s onward the establishment advocated statist and corporatist policies that resembled fascist ones in significant ways, are hardly claims I dispute. These and similar claims are precisely what I try to demonstrate (which is why I included a chapter called "We're All Fascists Now," and offered a lengthy critique of George W. Bush and compassionate conservatism). My purpose was not to make an ad hominem, "f-word" attack (although one might excuse liberals for thinking that's what I was up to, so accustomed are they to using the word "fascism" as a cudgel). The point is rather that we've been taught to be ever vigilant about fascism, yet we've defined the word in a way that makes us expect the threat from the wrong direction. That's why I didn't write a book about "statism," as some libertarian critics have claimed: Debunking the bogeyman of "right-wing fascism" is the book's central idea. And it's rather startling that the Left, which has argued for so long that economics is the *fons et origo* of all political morality, simply does not care that fascist economics and progressive economics overlap considerably, while fascism and the free market are at opposite ends of the political spectrum.

This myopia stems, I believe, from the "team" nature of leftism. For too many on the left, intellectual history is a story not of ideas, but of allegiances and coalitions. That's why the Left has come to believe that Communism and Nazism were opposites when in fact they were rivals. Ever since Stalin issued his "theory of social fascism," "fascism" has meant "traitor to the cause" or "heretic" more than it has been a substantive description of anyone's ideology. Trotsky became a "fascist" not because he changed his mind about Bolshevism but because he was deemed disloyal to Stalin. Father Coughlin was, in the words of the liberal Catholic intellectual Fr. John Ryan, "on the side of the angels" when he supported the New Deal as "Christ's Deal." He was anathematized as a fascist and right-winger only after he broke with FDR—despite the fact that he attacked FDR from the left. Those who actually subscribed to modern conservative ideas during this period did not admire or support fascism. For instance, Albert Jay Nock, the John the Baptist of modern conservatism, was consistently opposed to all variants of statism, whatever their "trade names."

If you see intellectual history as a history of ideas, things are much clearer. Suppose one had to give a Martian a field guide to 20th-century Earthling ideology. I would broadly define "left-wing" as statist, collectivist, egalitarian (within a defined group, be it based on class, race, or nationality), enamored of the Romantic spiritualization of the political, and hostile to tradition, religious orthodoxy, natural rights, and Lockean individualism. I would define "right-wing," particularly within the Anglo-American tradition, as pro-market, favoring limited government, respectful of religion and tradition, and protective of the individual and his rights. By any remotely similar definition, fascism belongs on the left—and, to date, not a single critic of the book has even come close to rebutting this basic point.

Tomasky, besotted with the team mentality, simply equated liberalism with the good guys. It is thus axiomatic that liberals cannot have anything to do with fascism, because "fascist" is the team name for the bad guys. He wrote: "However much or little Goldberg knows about fascism, he knows next to nothing about liberalism. Anybody familiar with Liberalism 101 grasps that there is something deep within liberalism, from its earliest beginnings, that prevents it from degenerating into fascism, and that is its explicit recognition that the state must serve both common purposes *and* individual liberty." He added that whenever the pursuit of common purposes "crosses the line into coercion, well, that is where liberals—I mean liberals who know something about liberalism—get off the train, and do their noncoercive best to derail it." Never mind that contemporary liberalism is shot through with coercion; this abracadabra definition exonerates it of every coercive thing government has ever done. Diehard fans of left-wing ideology might like this stuff, but it is not for intellectuals who presumably have graduated from Liberalism 101. It does, however, reveal one reason liberals are blind to their mistakes, as well as to their tendency to airily dismiss concerns about the expansion of government power when they are in charge.

We've been taught to be ever vigilant about fascism, yet we've defined the word in a way that makes us expect the threat from the wrong direction.

WHICH brings us to today. Barack Obama, benefiting from a cult of personality and a sacralized conception of his movement and of politics generally ("We are the ones we've been waiting for"), is expanding the role of the state at breakneck pace. During the campaign, he pledged his indebtedness to the very Progressives who are in the crosshairs of my book, and his wife insisted that her husband would fix our broken souls and make us work. His administration boasted that it would exploit the financial crisis as best it could.

And it has. In little more than 100 days, Obama has nationalized banks and the auto industry (admittedly with some help from George W. Bush) and abrogated contracts, and he is now pursuing nationalized health care and a takeover of the student-loan business (the better to force young people to "volunteer"). Nancy Pelosi, meanwhile, insists that global warming demands that "every aspect of our lives must be subjected to an inventory." None of this amounts to jackboots smashing a face, but neither does it fall entirely short of coercion. And so far, liberals show no interest in derailing the Obama train. They're too busy stoking its furnace. **NR**

Mexico's CARTEL WARS

In some ways, the nation's rampant violence is a sign of progress

BY MARIO LOYOLA

Mexico City

ARCHBISHOP HÉCTOR GONZÁLEZ caused a mini-scandal in Mexico when he declared recently that the country's most notorious drug baron, Joaquín "El Chapo" ("The Kid") Guzmán, was living right outside a small town in the archbishop's home state of Durango, and that "everyone except the authorities" knew it. No sooner had González apologized for what one commentator called an irresponsible "diffusion of gossip" than the bodies of two military-intelligence officers on an undercover surveillance operation turned up right where the archbishop had indicated, riddled with bullets from high-powered rifles. The bodies bore a characteristic warning: "Neither government nor priests will ever be able to take on El Chapo."

It's not an idle boast. Even the Pentagon has started to worry. Noting that Mexico's governing institutions "are all under sustained assault and pressure by criminal gangs and drug cartels," one recent Joint Forces Command study warned of the "serious implications for homeland security" of "any descent by Mexico into chaos."

Ironically, Mexico's struggle against the cartels is both a symptom and a symbol of the country's increasingly successful march to modernity and affluence. After 15 years of steady growth, Mexico's GDP per capita is now the highest in Latin America (and five times that of China), while unemployment is the lowest in the OECD. Today's Mexico bears little resemblance to the country I visited 20 years ago. Here in Mexico City, packed bars and restaurants abound, and commerce seems frenetic. Cities such as Monterrey are brimming with industry, shopping malls, and Wal-Marts. But in other parts of Mexico, where drug cartels battle for control of trafficking routes and bases of operation, violence is rife, the streets are deserted, and entire police forces have disintegrated. With official corruption still ubiquitous, Mexicans have little confidence in their government, or in the rule of law.

Pres. Felipe Calderón has staked his legacy on changing that mentality—and we have a lot riding on his success. To protect the gains of recent decades—and because they truly believe that Mexico can achieve first-world status—Calderón and his predecessor, Vicente Fox, refused to turn a blind eye to the drug trade, as prior governments had done. Fox began prosecuting corrupt senior officials rather than merely pushing them out of their positions, and abandoned a policy against extraditions to the United States. Calderón has gone further: From his first days in office, he has made crushing the cartels and ridding the government of corruption the focus of his administration.

The results have been bloody. As cartel leaders have been captured and killed, exceedingly violent power struggles have ensued. According to Juan Zarate, Pres. George W. Bush's deputy national-security adviser for counterterrorism, the cartels' battle for control of key trafficking routes is terrorizing border cities like Tijuana and Juárez. There were nearly 6,000 drug-related assassinations in Mexico last year, about double the prior year's number, heavily concentrated in areas where cartels clash. The vast majority of the victims were cartel members, but perhaps 10 percent were law-enforcement and government officials. As police forces are vetted and purged of corrupt elements, the cartels are forced to switch from bribery to intimidation, murder, and terrorism to keep them at bay.

Reducing drug use and even drug trafficking are, in a sense, secondary goals of Mexico's drug war. The main goal is to break up the cartels themselves. The reason is simple: Their efficient organization allows them to leverage firepower and money on a scale large enough to threaten the state. But they have been hit hard by the government's offensive: Most of their founding members are now dead or in prison, and in many cases, top-down leadership has disappeared altogether, giving way to atomized, horizontal structures, fleeting alliances, and chronic intramural conflict.

Most accounts put the number of Mexico's major drug cartels at five or six. Each is thought to be based in a particular town or region, but they are present at production sources throughout Latin America and have distribution networks across the U.S. market.

Part of what has made the cartels so dangerous is their progressive militarization. The best example is the Gulf cartel, which, along with its paramilitary wing, the infamous Zetas, is thought to be the best-armed and most dangerous in Mexico. Years ago, a senior Mexican army officer disappeared and began recruiting Zetas from among Mexico's military. The Zetas have developed the sort of platoon- and company-size tactical operations that one associates with full-blown insurgencies. They use these tactics to battle law-enforcement agents and army troops, destroy rival cartels, and murder, kidnap, or intimidate citizens who oppose them, including journalists.

A dizzying array of military firepower has been seized from this organization, including anti-tank rockets, rocket-propelled-grenade launchers, and hundreds of grenades and assault rifles. But after two of its leaders were captured and extradited to the U.S. in rapid succession, the cartel appeared to degenerate into a power struggle among perhaps eight different drug barons, several of whom have been captured or killed. Meanwhile, attrition has sapped the Zetas of their best-trained and most disciplined cadres.

AT the same time, however, the cartels have managed, through a combination of intimidation and corruption, to bring about the disintegration of entire law-enforcement agencies. The best example is the Juárez cartel, based across the Rio Grande from El Paso, Texas. Last year, after it threatened to kill an officer every 48 hours until the police chief resigned, the Juárez police force simply fell apart, and Calderón had to send in

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some 8,000 army soldiers to patrol the streets. According to Juan Zarate, this has helped to break the cycle of corruption, but in many places the city remains a virtual ghost town. Meanwhile, hundreds of thousands of vehicles continue to cross back and forth between Juárez and El Paso every month, leading some in the U.S. to call for closing the border. But this is out of the question: Millions of jobs in both countries depend on cross-border traffic, and the cartels would simply find another way to get in. Indeed, they are already making increased use of the scores of illegal crossing points that have been identified by the Drug Enforcement Administration, which is woefully understaffed at the border.

The worst-hit cartels have responded by diversifying their sources of revenue. In far northwest Mexico, across the border from San Diego, the Tijuana cartel (whose travails were dramatized in the Steven Soderbergh film *Traffic*) has delved into human trafficking, prostitution, and brokering access to corrupt officials. As the territory it controls has shrunk to just the border towns of Tijuana and Mexicali, and as several of its major figures have deserted to other cartels, the resulting carnage has made Tijuana one of Mexico's most violent cities, with more than 1,200 assassinations last year. At least 300 families there have reported missing persons, and many streets that once teemed with American tourists are now deserted.

The outcome of Felipe Calderón's fight against the cartels remains very much in doubt—at least in the near term—and things could get much worse before they get better.

One of the core competencies of the cartels is penetrating government institutions, both to secure police protection and to conduct espionage (particularly to keep abreast of ongoing investigations and planned operations). The organization of the Beltrán Leyva brothers—another major cartel—is infamous in this respect; a member of President Calderón's bodyguard was recently indicted on charges of spying for the brothers on a monthly retainer of $100,000. Widely believed to have given El Chapo his start in the crime business, the brothers later reportedly broke with him and displaced his cartel from the Pacific state of Sonora in what one Mexican official described as a "bloodbath." According to a U.S. law-enforcement official in Mexico City, this highlights one major result of the drug war: Cartel alliances are no longer rigid or lasting, but rather transactional, dynamic, and often violent.

Another result of Mexico's war on the cartels resembles what happened to al-Qaeda after 9/11. Having lost much of their senior leadership, the cartels have reduced their vertical integration, adopting a more fluid horizontal model—a system of autonomous franchises that maintain mutual isolation for greater protection. The cartel that has managed this transition most effectively is the one widely seen to be Mexico's most powerful: the Sinaloa "Federation" of Joaquín "El Chapo" Guzmán.

This cartel is based in the Pacific Coast state of Sinaloa; in combination with a few nearby affiliated organizations, chiefly the "Family" of Michoacán, it is also referred to as the "Pacific cartel." According to Mexican law-enforcement officials, the Sinaloa cartel has the most resilient structure of any cartel in Mexico, and has managed to secure the best police and military protection in its areas of operation, which run from northern Mexico to the Yucatán Peninsula and Chiapas. It is present throughout the Western Hemisphere, from Argentina, Peru, and Colombia to the U.S. and even Canada. Last February, a massive raid against the cartel by U.S. law-enforcement agencies—dubbed "Operation Xcellerator"—netted some 750 arrests of Sinaloa foot-soldiers in 26 states across America.

Despite the beating they have taken, Mexico's drug cartels remain entrenched, well armed, and fantastically well financed. Last year, hundreds of millions of dollars were seized from the cartels, more than the U.S. Congress appropriated for counternarcotics efforts in Mexico. This year, El Chapo made it onto *Forbes*'s list of the world's richest people (in an absurd touch, *Forbes* lists his industry as "shipping").

The outcome of Calderón's fight against the cartels remains very much in doubt—at least in the near term—and things could get much worse before they get better. According to one former Bush-administration official, the cartels may soon be able to "buy themselves an election" in Mexico, bringing to power an anti-American government tolerant of their activities and friendly to Venezuelan strongman Hugo Chávez.

On the other hand, the situation in Mexico today is not nearly as bad as the situation that faced Colombia ten years ago, when, according to the former Bush official, "the FARC was in a position to march on Bogotá" and the country was on the verge of becoming a narco-state. Presidential candidates were on the take and vulnerable to assassination, and they could be kidnapped with impunity: Consider the case of Ingrid Betancourt, who was held captive for more than six years in dense jungle. As Juan Zarate points out, the FARC controlled large swathes of jungle territory, and that jungle is one main difference between Colombia and Mexico: Impassable rainforest, which takes up about half the country, provided effective cover for terrorists and other criminal organizations. But in Mexico, according to one U.S. law-enforcement official, the difficulty of accessing remote areas is mostly logistical. Not many parts of the country are impassable, so a few advanced helicopters can make a big difference.

Helicopters have been the most high-profile element of the assistance the U.S. is providing to Mexico under the Bush administration's Mérida Initiative, which President Obama has wisely embraced. The program has been compared to Plan Colombia, which helped that nation survive its years of civil turmoil, but a more apt comparison is to the "partnership capacity building" efforts that have guided U.S. policy in the War on Terror. The basic idea of "partnership capacity building" (a term coined by Douglas Feith, the former under secretary of defense for policy) is to ensure that partner governments are able to govern all of their sovereign territory. As we learned on 9/11, transnational threats thrive in weakly governed or ungoverned areas.

The policy consists of helping nations where transnational terrorist and criminal networks are present to build lawful and effective governance. Areas of assistance range from the military and law enforcement to legislation and even budget administration. As the phrase "partnership" implies, the U.S. seeks to build connections between its institutions and those of its partners. The idea of the Mérida Initiative is not to put U.S. personnel on the ground—as happened in Plan Colombia—but rather to help Mexico become fully effective in our common struggle against drug traffickers. According to one U.S. official in Mexico City, the Mérida Initiative has greatly changed the character of cooperation between the U.S. and Mexico. And the cooperation goes both ways: Mexican law-enforcement personnel are now sometimes embedded with U.S. agents hunting drug traffickers in the southern U.S., to help the agents understand what they are looking at.

But to be successful, such efforts require a steadfast commitment throughout the institutions of the partner nation. And while Calderón's commitment is not in doubt, the scale of corruption in Mexico leaves a great deal of doubt about the rest of his government. The large number of senior officials under indictment for corruption and drug trafficking, including a former drug czar and a former federal police chief, is both good news and bad news. The good news is that they are being investigated, prosecuted, and punished; the bad news is that so many of them are corrupt in the first place. But with vetting programs such as "Operation Cleanup," Calderón has made the fight against corruption a centerpiece of his administration. A few weeks ago, ten mayors were among dozens of officials arrested on drug-related charges in a single operation. Both the drug barons and the government officials in their pockets are visibly losing their "untouchable" mystique.

Another promising new effort is Plataforma México, an integrated law-enforcement network and database that will provide real-time intelligence to local, state, and federal law enforcement. Under the umbrella of the Mérida Initiative, the U.S. has furnished powerful computer servers, and a variety of U.S. agencies are assisting the effort. Perhaps even more important in the long run is a sweeping court reform that will replace Mexico's antiquated and corruption-prone criminal-justice system with modern American-style criminal procedures.

The greatest challenges, however, remain local. While the national government is increasingly modern and effective, state and municipal governments remain ensnared in a culture of patronage that is resistant to reform and susceptible to corruption. In the southern state of Chiapas, one young resident of the beautiful town of San Cristóbal tells me that during her few years working in the town government, she was horrified at the extent of corruption—starting with that of the mayor, who would routinely instruct her to sign dubious requests for project funds from favored officials, even when it was clear that the project was merely a cover for graft. Calderón wants public office to be seen as a public service, but in Mexico it is still all too often seen as a lucrative asset.

The town of San Pedro—the Beverly Hills of Monterrey—is emerging as a leader in the effort to forge modern municipal government. While visiting Monterrey, I had several opportunities to meet with San Pedro's mayor, former senator Fernando Margáin, who was chairman of the Mexican senate's foreign-relations committee during the presidency of Vicente Fox. He tells me that after the town's police chief was assassinated two years ago, local authorities visited the U.S., as well as several countries in Europe and the Middle East, to survey law-enforcement technologies and "best practices."

Out of that effort came a modern "C4" (command, control, communications, and computers) center, which integrates images and communications from fixed surveillance cameras—as well as cameras onboard new American-style police vehicles—in a heavily armored building that can continue to function even if cut off from outside sources of electricity and water. Perhaps more important, half the members of the police force were let go after vetting, and the remainder were retrained while their wages were almost doubled—a policy that has also been used to good effect in Iraq. New recruits have to go through extensive background checks and must submit to routine lie-detector tests. Fernando Margáin reports that theft and other violent crime has plummeted in San Pedro, though drug trafficking has not fallen quite as far.

But there is a long road ahead. After one San Pedro police officer was assassinated in a gangland shooting, Margáin made a statement on television slamming the drug cartels as cowards and killers of innocent people. As he was driving home a short while later, his cell phone rang. "We are not cowards," the voice on the other end said. "We don't kill women or children. Why don't you just let us work?" Mexican drug traffickers are surprisingly touchy about their reputations: Many view themselves as almost romantic figures, men of principle and property and even philanthropic inclinations. The lavish and faintly grotesque mausoleums they provide for themselves and their dearly departed receive visitors regularly, often daily. Like Pablo Escobar, the Colombian drug lord who was killed in 1993, some drug barons are local heroes.

This may seem quaint, but it is one more way that the cartels pose a deadly threat to Mexican society. As long as cartel members are respected, the state's grip on legitimacy is weakened. Iraq and Afghanistan face similar problems, as did the United States itself in the days of the Wild West. Today we romanticize the outlaws of Sam Peckinpah's *The Wild Bunch*, but it was a good and necessary thing that modernity closed in on them and swept them from the land.

The day before I arrived in Mexico, 44 members of the upper echelon of the Michoacán "Family" were arrested in church while attending a baptism. Once again, operational security was preserved, the suspects had no warning, and not a shot was fired. The subsequent photo op—which got the intended play on front pages across Mexico—seemed staged to deliver a message: The suspects were lined up in handcuffs in front of an imposing police helicopter, as if to symbolize the power of the state. Visible on the engine casing, just above their heads, was a legend both mundane and unmistakably modern: "To Protect and Serve the Community." **NR**

THE OBAMAS ON THE OBAMAS, pp. 40–41

Newsweek

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THE TAKE **The Long View** BY ROB LONG

D STATES OF AMERICA

A Conversation from Heaven

In an interview with NEWSWEEK, Obama responds to the critics of his critics.

Michelle Obama: "It's been a challenge. But one of the things we do best, along with the other things that we do best, is meet challenges."

President Obama: "Has the level of love surprised me? Not really. People keep saying, 'Oh, the press loves you, oh, the American people love you,' and I say, 'Fine,' but first and foremost, I love me. I love me very very much. And that's what keeps you going."

We caught up with the First Couple on an Air Force One flight over New York City.

NEWSWEEK. So, does it still feel strange to be flying around on Air Force One, running a nation and a large auto company?

PRESIDENT OBAMA. Strange? No, not really.

NEWSWEEK. This was your destiny?

PRESIDENT OBAMA. Look, everyone is put on earth for a reason. I'm here to transform a nation and build a better mid-size sedan. Michelle is here to support me and help raise our children. You're here to interview me. The American people are here to vote for me. We all play our part. This isn't a "me" situation.

NEWSWEEK. So you always knew you'd be on the cover of NEWSWEEK?

PRESIDENT OBAMA. Well, not seventeen times!

MICHELLE OBAMA. Nineteen, actually.

NEWSWEEK. Well, twenty, after this one!

MICHELLE OBAMA. Hahahahahahahahahaha!

NEWSWEEK. Hahahahahhahahahahahahaha!

PRESIDENT OBAMA. Twenty? So the other thirty-two are of . . . what? Trends and things? Are you sure that's wise? I mean, for consistency's sake . . .

NEWSWEEK. Hahahahahahahahahaha!

MICHELLE OBAMA. Hahahahahahahahaha!

PRESIDENT OBAMA. Wasn't really kidding.

NEWSWEEK. Mr. President, look down the road a bit for me, if you don't mind. Where are you in a year?

PRESIDENT OBAMA. Well, that's an excellent question. And I think about that a lot—where I'll be, what I'll be doing well, what I'll be loved for—and it seems to me that a year from now I'll be on the cover of NEWSWEEK,

M. OBAMA: BRIAN ZAK/SIPA B. OBAMA: PETE SOUZA AIR FORCE ONE: AFP

maybe in front of a picture of the new GM car I designed, maybe talking to some of the people in line for surgery at the hospital, maybe helping a newly released prisoner from Guantanamo open up his first UPS Store in Visalia, California. Really, the sky's the limit.

NEWSWEEK. That's a wonderful answer.

MICHELLE OBAMA. But all of that means there's still a lot of work ahead.

PRESIDENT OBAMA. Right, right. Of course.

MICHELLE OBAMA. A year from now, I'll be wearing flats. Just an FYI to the buyers out there.

NEWSWEEK. Mr. President, critics of your critics have suggested that your critics are racist fearmongers, right-wing reactionaries, flat-earthers and Jesus freaks, gun nuts, serial killers, Rush Limbaugh cult worshippers, and small businessmen. What do you say to those critics of your critics?

PRESIDENT OBAMA. Well, look, I've learned in my six years in politics not to get all bogged down in responding to every little thing that the critics of my critics might say. So I try not to engage, frankly. Critics of my critics have their own agenda, their own voices. They can speak for themselves. As I said, my goals are to nationalize health care, free the prisoners in Guantanamo Bay, and build a popular family-sized sedan. I'll let the critics of my critics do what it is they do best.

NEWSWEEK. Mrs. Obama, does it bother you what the detractors of some of your husband's political enemies have pointed out? That he's made a few mistakes?

PRESIDENT OBAMA. Wait. What?

NEWSWEEK. Very small ones, sir.

MICHELLE OBAMA. No, it really doesn't bother me. Look, this is a business, okay? And sometimes it's important—look, we've got to keep a useful dialogue going, which is hard when it's all just one loud cheering section, right?

PRESIDENT OBAMA. Not following you.

MICHELLE OBAMA. I mean, look, sometimes it's useful to admit to small, easily forgivable mistakes. That makes the critics of our detractors seem fair.

PRESIDENT OBAMA. I'm lost. Small whats?

NEWSWEEK. I'm lost, too.

MICHELLE OBAMA. I just mean that admitting to small imperfections is a great way to highlight what is, in fact, perfect about you.

PRESIDENT OBAMA. Not following you at all.

NEWSWEEK. Let's change the subject. How about Sasha and Malia? How's the adjustment for them?

PRESIDENT OBAMA. They love me very very much. That's the important thing.

NEWSWEEK. This has been such a great interview! Kill me now! I'm in Heaven!

PRESIDENT OBAMA. If you're in Heaven right now, who does that make me?

NEWSWEEK. Exactly!

> **"IF YOU'RE IN HEAVEN RIGHT NOW, WHO DOES THAT MAKE ME?"**

MICHELLE OBAMA. Okay, okay. We've been circling the Statue of Liberty for a couple of hours now. Any more questions?

NEWSWEEK. Let me flip through my notes here . . . nope, nothing.

MICHELLE OBAMA. The economy?

NEWSWEEK. Nope.

MICHELLE OBAMA. Spending?

NEWSWEEK. Um . . . no.

MICHELLE OBAMA. The debt? Iraq?

NEWSWEEK. No and . . . no.

MICHELLE OBAMA. Health care? Nancy Pelosi? Immigration? Gay marriage? Torture memos? North Korea? Chinese bondholders? TARP funds? Sotomayor? California's budget crisis? Iranian nukes? Israeli elections?

NEWSWEEK. No, no, no, um . . . no, nope, not so much, uh-uh, nah, no, negatory, no, and not today.

MICHELLE OBAMA. Okay then.

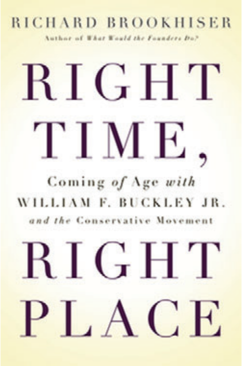
NEWSWEEK. Can I sit here quietly for a moment and just bask?

PRESIDENT OBAMA. That's exactly what the guy from *Time* said.

Books, Arts & Manners

How It Was

JOHN O'SULLIVAN



Right Time, Right Place: Coming of Age with William F. Buckley Jr. and the Conservative Movement, by Richard Brookhiser (Basic, 262 pp., $27.50)

Richard Brookhiser in the late 1960s was a clever young student in upstate New York, unconventional only in being somewhat more conservative and more bookish than his peers, when he unexpectedly entered history by mailing to National Review a drily skeptical essay on a student protest at his high school. He lived in a pleasant suburb of Rochester. His parents were respectable, law-abiding, and dutiful middle-class Americans. They demonstrated this most flamboyantly by voting Republican. Rick himself was conscious of belonging to no minority, visible or invisible. He was clever and therefore on the escalator of post-war American meritocracy. Otherwise, no distinguishing marks.

The young Rick must have looked destined to end up as one of those Men in Gray Flannel Suits who, according to the social theories of the time, lived lives of quiet suburban desperation (though the television series *Mad Men* paints a much livelier picture of them). None of this predicted Rick's actual future, however. To begin with, the times changed. The conformist Man in the Gray Flannel Suit disappeared soon after he was theorized into existence, as the Sixties revolution either recruited him or drove him to an angry defense of himself. The WASP majority, to which Rick belonged and which he later categorized in his book *The Way of the WASP*, suddenly became first a minority, and then an embattled one in a sea of diversity.

Rick changed too—or, rather, emerged from his high-school chrysalis. Early on he exhibited the flamboyant-cum-subversive tendencies of a dandy, carrying a silver-topped cane and wearing gray flannel only as background for the mauve and orange colors of his ties, jackets, pants, and shoes. He married "out" to a Jewish Freudian psychoanalyst, Jeanne Safer (who, I must confess, has always struck me as too vital for her profession—can there really be such a person as a bubbly Freudian psychoanalyst?). Finally, in early middle age he began a brilliant new career as a historian by writing a biography of George Washington that was subversive precisely because it was an admiring account of a WASP hero.

It is necessary to underline these things because an inattentive reader of *Right Time, Right Place* might be misled into seeing its author as a modest, retiring sort of fellow to whom things happen. Passivity does play a part in the story, and Rick does not hold back from admitting the fact. But if he begins as a Crouchback reacting to events shaped by others, he ends as a Waugh shaping them. In both cases, of course, the events are mainly words.

For what happened to Rick between sending off that fateful high-school essay and writing the Washington biography was National Review. His freshman essay became a full-blown NR cover story on the campus revolution. He served as an NR summer intern. He met and bonded with William F. Buckley Jr. He was hired as a full-time NR staffer. He was given more cover stories to write, apparently as tests for Bill to judge. And one day in 1978, just as he was preparing to leave NR for law school, Rick was taken out for lunch to a high place (a.k.a. Paone's Restaurant on 34th Street), shown the kingdoms of the world, and offered the editorship of NR and all the stock of the magazine on Bill's eventual retirement. Meanwhile, he would immediately become a senior editor and later the managing editor.

This was an extraordinary offer even from Bill, who had a long track record of searching out, hiring, encouraging, and promoting young writing talent. Rick was 23, relatively inexperienced in life if not letters, wry and modest in manner, and not the most obvious executive type even in NR's fantastical gallery of eccentric wordsmiths. But he was young, precocious, calmly sane amid a crowd of volatile geniuses, had a distinctive and even quirky writing style, and had graduated from Yale—in other words, he was the nearest thing to Bill on 35th Street in 1978. That list does not exhaust Rick's virtues, of course, since was also a good judge of writing, a fertile source of strong editorial ideas, and (like Bill) an excellent talent scout. But it helps explain why Bill warmed to Rick to the extent of deciding in 1978 that Rick would make his ideal successor in 1990.

Even if post-dated, this was a check that no one could refuse to cash, as I well know. It was accompanied in Rick's case by additional signs of a deeper friendship. Bill took him on a trip through Mexico—a first installment on the world—and began to give him progressively more editorial authority. For the next eight years, Rick was a senior figure on the magazine that from 1981 onwards was known to be the favorite reading of the president of the United States. He traveled to other kingdoms of the world—Taiwan rather than Rome, admittedly; Angola before the Riviera, alas—and enjoyed the feeling of being very near the center of world-historical events.

His account of these glorious years for NR is a highly entertaining one. It is full of good jokes, almost all new to me, such as David Brooks's reply to Rick's admission that he couldn't recall meeting the famously reclusive *Wall Street Journal* editorial-page editor Robert Bartley: "Then you spoke to him." Full of good secrets too—late at night in an empty office Rick seems to have overheard Bill discussing with Sen. Daniel Patrick Moynihan the possibility of throwing NR's 1980 endorsement to him rather than to Reagan. (Fortunately for everyone, Moynihan never ran and, as Midge Decter said when plumping for Reagan, you can't support someone who won't support himself.) Thirty years after its founding, NR was a magazine worth

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serious courting by conservatives in both parties.

Yet, as Rick's sharp but friendly pen-portraits of colleagues such as Joe Sobran, Jeff Hart, and Keith Mano demonstrate well and often hilariously, NR was a magazine staffed by outsiders and natural rebels, albeit brilliant ones. Initially the Reagan administration too was staffed by outsiders and natural rebels. The two were a good match. Rick even encouraged younger conservatives to head for the Beltway rather than the world of small magazines if they wanted to determine immediate policy. But he was always cold-eyed about politics. He was distressed when Bill allowed himself and the magazine to be "stroked" by a Reagan emissary on legislation hiking taxes. As the Eighties wore on, the Reagan administration gradually fell under the sway of more pliable and conventional apparatchiks. It drifted farther away from Rick's and NR's variety of conservatism. And Rick began to heed his own warning that "intellectuals are the Kleenex of administrations—used, then discarded." Though he didn't quite realize it yet, he was tempted to move into different writing terrain—longer-term, more detached, less topical.

That may also help explain two otherwise odd developments in this period. Rick resisted Bill's suggestions that he take a bolder line in ordering NR's editorial content—though "resisted" is the wrong word: He simply never followed through on his intentions to do so. Why? Well, NR was Bill's creation; Rick concedes that he shrank piously from making it his own. On the other hand, Rick was not passive when passivity would have been diplomatically advisable. He said frankly that any talk of a presidential bid by Bill was simply not "serious." And he withheld praise from one of Bill's novels when his boss was seeking his approval.

One need not be a Freudian psychoanalyst, even a bubbly one, to suggest that these contradictory attitudes reflect ambivalent feelings toward a father figure. In family life, these contradictions are usually resolved by the son's establishing his independence and then constructing a new relationship on a more equal footing. In this case, the father figure thrust independence—an independence that was not consciously wanted—on the son, after which establishing an equal friendship took much longer.

Out of the blue, one day in 1987, Rick received a letter from Bill that began discouragingly: "It is by now plain to me that you are not suited to serve as editor-in-chief of NR after my retirement." It did not get less discouraging. Bill made it clear that his decision was based on Rick's alleged lack of executive ability, that his true gifts lay in the writing of books, and that the decision was irrevocable. Such candor would be hard to take in a love letter. It was impossible to take in a notice of dismissal. Rick was hurt, angry, and upset on several grounds: the shock, the withdrawal of Bill's confidence, what he felt was the cheese-paring "peonage" of the financial settlement Bill offered, and much else. But the deepest wound was his insight that this was a breach between two mental states: his own substitute-father fixation and what he now intuited as Bill's narcissistic projection.

He summarizes Bill's letter in a parody of Bill's style: "It is now plain to me that the evidence of your name is indicative of a larger truth. You are not, in fact, me." Ouch! as the saying goes, but Rick's fist hurt too.

Reader, I was the innocent beneficiary of this psychological Armageddon. About a year later, Bill telephoned me in London to offer me the editorship of NR more or less immediately, the arrangement to be confirmed by both sides as permanent after six months. In July 1988 I arrived in New York to edit the magazine and to be introduced to people at a series of dinners attended by, among others, Rick and Jeanne.

Rick certainly possesses an iron discretion. I knew from friends that he had been disappointed in his legitimate hopes at NR. I expected a scowl at the very least. In the book he confirms that he was seething with hurt and envy. Not on the surface. A few conversations with him persuaded me that he had overcome any feelings of bitterness, even of annoyance. And, as he also confirms in the book, that surface soon developed depths. We established first a good professional cooperation and later a firm friendship, which, at a later crisis in my private affairs, gave me great comfort.

Rick is very generous about my editorship and observes in particular that I carried through some of the reforms of NR to make it livelier, from which he had shrunk. This review is not about me, but a quick explanation may fit into it. I was an old journalistic hand in 1988, having worked in five media organizations by then. If everyone has a novel in him, every journalist has a magazine in place of the novel. So far I have edited the same magazine under four different names—NR was the third in line. Above all, I liked and admired WFB from Day One, but I did not hero-worship him. I had already used up my reserves of hero-worship on Colin Welch and Peter Utley, when I worked with them on the *Daily Telegraph*. So I had a rough idea of what to do when I arrived at NR and no (relevant) psychological hang-ups about doing it. That gave me a great advantage over an NR "lifer" like Rick.

But I could not have changed (and, let us hope, improved) the magazine as I did if I had not enjoyed the help and support of Rick and other NR colleagues such as Linda Bridges, Mark Cunningham, Dorothy McCartney, and, in due course, the current editor. Fortified by that, I went on to enjoy nine very happy and productive years at NR until, eventually, I too came home to find an unexpected letter from Bill. But that is another story.

Rick too has benefited in the end from his disappointment. He reestablished a firm and decently rewarded position at NR. He built up a strong and respected freelance career independent of the magazine. He strengthened his relationship with his actual (and somewhat neglected) father, whose qualities of fortitude and diligence he came to respect. He became a successful historian and biographer of the Founding Fathers. And, after a few missteps and overtures from Bill and Pat Buckley, he and Bill became good friends again—but this time on a more equal and less fraught footing.

Some critics may argue that this is a bitter book. That would be quite untrue. Rick is very candid about the bitterness he felt at points toward Bill. But he is equally candid about his own adolescent responsibility for those feelings. And he makes it clear that he eventually overcame that bitterness. His final emotion is, at worst, bitterness recollected in tranquility.

Rick's picture of Bill will inevitably upset or annoy those who would like to recall Bill solely in one of his great public roles—as the witty debater of *Firing Line*, the juggling wordsmith of "Notes & Asides," or the dragon-slayer of liberaldom. But even worldly saints don't exist this side of paradise. And Bill had his faults. He was sometimes arbitrary, inattentive, curt to admirers, and snobbish. He had an excessive respect for the merely rich. But he was also kind, generous, charming, inventive, witty, and hard-working. And he was quietly charitable to those in trouble. The world was lucky to have him as a public figure, and his friends were fortunate to enjoy him as a private one.

Rick shows both sides of the man. I decided not to read Chris Buckley's new book until finishing this review. But, so far, this is the best all-round depiction of Bill—warts and all, but not only warts—that I have read. It is also written with an easy grace and wit that Bill could cite as evidence that his estimate of Rick's talents has proved to be a correct one.

Still, I have one serious complaint. On page 206 Rick delivers a judgment that generously flatters my literary tastes but gravely mistakes my moral character. I probably won't sue. **NR**

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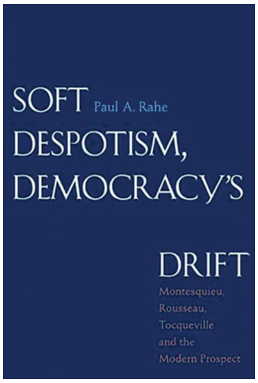
Can We Outlast the Contradictions?

WILLIAM VOEGELI



Soft Despotism, Democracy's Drift: Montesquieu, Rousseau, Tocqueville, and the Modern Prospect, by Paul A. Rahe (Yale, 400 pp., $38)

CONSERVATIVES are accustomed to books, from *The Road to Serfdom* in 1944 to *Liberal Fascism* in 2008, warning of the affinities between the leftist project and hard despotism. Now comes a valuable new book from Paul Rahe, a Hillsdale College historian, warning of the dangers of soft despotism.

Where hard despotism brutalizes, soft despotism infantilizes. Hard despotism conquers the social spaces where citizens live their lives and exercise their freedoms. Soft despotism slowly and imperceptibly fills the vacuum formed when citizens voluntarily abandon those spaces.

Rahe directs our attention to modern Western European social democracies to understand the encroachments of soft despotism, and to France to see its culmination. His discussion of the "French disease" makes clear that Frenchmen's virtuosity at surrendering to invaders and terrorists is the result of a few centuries of practice at surrendering their destinies and liberties to bureaucracies. Such entities constitute, in Tocqueville's words, "an immense, tutelary power, which takes sole charge of assuring [the people's] enjoyment and watching over their fate. It is absolute, attentive to detail, regular, provident, and gentle."

In a thesis resembling that of *The Cultural Contradictions of Capitalism*, by Daniel Bell, Rahe argues that the effects of living *in* a democracy render the continued survival *of* democracy increasingly doubtful. Democracy drifts as its citizens gradually embrace habits and dispositions that treat freedom as a burden, and reduce self-government to a hollow ritual in which wards choose between interchangeable sets of wardens.

To grasp the dangers confronting America tomorrow and today, we need to understand the past interplay between the distinctive features of our social condition and the inherent tendencies of democracy. America "should not gloat or be smug," says Rahe, for we, too, have "contracted the French disease," which now "advances at a quickening pace."

Fittingly, Rahe turns to French political philosophers for guidance. To understand the perils posed by the cultural contradictions of democracy we need to understand Tocqueville. (On this point Rahe's argument aligns with the assertion of Harvey Mansfield and the late Delba Winthrop that *Democracy in America* is "the best book ever written on democracy and the best book ever written on America.") And to understand Tocqueville we need to understand Rousseau and Montesquieu, since Tocqueville was "Rousseau's secret admirer" and "Montesquieu's heir."

Rahe's peers, professors of intellectual history and political philosophy, will find the meticulous scholarship and deep erudition he brings to connecting the three French philosophers impressive and provocative. To summarize *Soft Despotism*'s subtle, thorough argument too briefly to do it justice: Montesquieu contended in the early 18th century that the "Achilles heel" of the modern commercial republic was its pervasive sense of restlessness and anxiety, culminating in what Leo Strauss called "the joyless quest for joy." Rousseau, writing in the middle of the 18th century, was even more pessimistic, presenting "citizenship on the ancient model as the only plausible remedy" for modern restiveness, according to Rahe, but giving little reason to expect the convenient reappearance of that deus ex machina before the curtain comes down. Tocqueville, finally, combined the most detailed exposition of democracy's self-extinguishing tendencies with the qualified hope that America's unique history and social conditions offered the most promising check against those tendencies, one that might even be sufficient to save democracy from itself indefinitely.

The portion of the book most accessible and interesting to the lay reader will be the final chapters, tracing the practical consequences of democracy's contradictions. There, Rahe argues that all the components of "American exceptionalism" hailed by Tocqueville are weakening, and urges us to fortify them. It is "one thing to diagnose," says Rahe of Rousseau, "and another to cure."

Of course, the vast majority of books written about politics offer diagnoses more compelling than their cures. *Soft Despotism* is no exception to this rule, but the reasons its prescriptions underwhelm are as important and interesting as the book's argument itself.

Soft Despotism's final page exhorts Americans to recapture the "Don't Tread on Me" spirit: honor, proud self-reliance, and the vigorous, jealous defense of liberty. Tocqueville found ample evidence of these qualities in the America he visited in 1831, and wrote about them admiringly. Rahe, too, cherishes the American traits that push back against the gravitational pull toward soft despotism, and laments that they are far less evident today than they were 178 years ago. Their reinvigoration will require according "central importance" to such commitments as "chastity and fidelity, marriage and family," "religious faith," "local and state autonomy," the "right to life," the "right to retain that which one has earned," and, above all, "the profound dignity and crucial importance of citizenship in the broadest sense."

It is an agenda that tells modern conservatives nothing they will be unhappy to hear, but less than they need to know. To be sure, says Rahe, we cannot re-create "the small-town America that so impressed Tocqueville." At the same time, he warns Americans that it is imperative to "be what we once were," lest we "settle for a gradual, gentle descent into servitude."

The hard question remains: What does it mean, in theory and practice, to be what we once were, after it has become impossible to live as we once lived? It is here that Rahe's cure comes up short, and where the reader begins to worry that an effort to wrest a fighting faith from *Democracy in*

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America is fundamentally misbegotten. Tocqueville was not Tom Paine; even less was he *le premier dittohead*.

He was, rather, an exemplar of philosophical discernment and resignation. For Tocqueville, playing the hand that history deals us as best we can is our highest duty. Folded within it is the obligation not to kid ourselves about our latitude for action, or the scope of the successes we can hope for. To keep social and political conditions from getting worse will often be a signal achievement. The more quotidian victories will see conditions get worse slowly rather than rapidly. Effecting any significant, durable reversal of democracy's drift is an item rarely found on history's menu.

Consider Rahe's unhappy but indisputable observation that "the sexual division of labor, so admired by Tocqueville, has gone by the boards." That division was based on a belief Tocqueville considered more prevalent among Americans than Europeans in 1831, but one largely taken for granted in every time and place until our own lifetimes. It was the belief, in Tocqueville's words, that "nature had established a very great difference between the physical and moral constitution of man and that of woman" with the clear intent "to give their differing faculties a diverse employment." Americans embraced that belief, and gave it social force, through "an inexorable public opinion that carefully restrains woman within the circle of her domestic interests and duties and that prohibits her from departing from it."

Does Rahe's summons "to be what we once were" include *that*? If so, the problem is not that a resolution to revive those attitudes would be shouted down by the National Organization for Women, but that it would have little chance of securing a majority of Conservative Political Action Committee delegates.

Tocqueville saw how families formed by men who were husbands, fathers, and providers, and women who were wives, mothers, and homemakers, constituted a haven from the joyless pursuit of joy, and a bulwark against the democratic drift toward servitude. But careful readers of *Democracy in America* cannot be surprised that, in a democratic age, the relentless, pervasive spirit of equality ultimately enveloped and transformed that haven. For perhaps 10 or 15 years after Betty Friedan's *The Feminist Mystique* appeared in 1963, there were conservatives trying to hold the line. Many insisted that girls should still regard motherhood and "domestic interests and duties" as the most natural, satisfying, and admirable path for their lives, and all the alternatives that disdained or qualified the commitment to home and family as profoundly dubious.

As long ago as 1987, however, Allan Bloom could describe that battle in *The Closing of the American Mind* as a question settled so decisively as to make it hard to believe it had ever been contested: "Men and women are now used to living in exactly the same way and studying the same things and having the same career expectations. No man would think of ridiculing a female premed or prelaw student, or believe that these fields are not proper for women, or assert that a woman should put family before career." Last year, the only people who asked whether Gov. Sarah Palin's political career impinged on her duties to her husband and children were liberals trying to bait family-values conservatives. No one took the bait because no one on the right wants to fight about all that anymore.

The fact that the democratization of domestic life has proven irresistible has not rendered it feasible, of course. Predictably, democracy turns out to be ludicrously maladapted to governing a polity of two. After every precinct has reported, the final vote tally is always either 2–0 or 1–1. Matrimonial democracy, in other words, is peerless at settling faux disputes and useless at resolving real ones.

Bloom examined these difficulties, but concluded equivocally: "I am not arguing here that the old family arrangements were good or that we should or could go back to them." Rahe, by contrast, clearly believes the old family arrangements *were* good, lamenting how "we have forgotten" that "strong, stable families" are vital to limiting the ends government may pursue and the means it may employ. The clear implication is that, yes, we should go back to the old family arrangements *if* we could, but Rahe has little to say about *how* we could.

Similarly, Rahe joins Tocqueville in praising Americans for their participation in local government and civic associations, which gave them a sense of stew-

OBSESSION

I study the hours on an heirloom watch,
Precious hours marked with diamonds
That scatter the sunlight over the room.
Since you left, I am obsessed with time,
Unsure if it is my enemy or my friend,
Knowing that all suffering ends in time.
I wonder if minutes might be redeemed
To some purpose, palliative and kind,
By watching them pass under the second hand,
Or spill in a silver stream through the hourglass,
The wavering thread of sand creating
A pyramid of minutes from its domed tower,
Where a phantom finger gently pushes down
On the white drift until the hour is over.

The hands of the pendulum clock atone
At noon, point to the zenith where the sun
Looks down upon our garden. Alone here
I ransom an hour of daylight,
Hovering over the gnomon of the sundial.
I'm furious at time, which has no end
And no beginning, no heart or balm to heal,
Blind with grief, sun-stricken and unable
To tell by sight an enemy from a friend.

—DANIEL MARK EPSTEIN

ardship and confidence about managing the public affairs that affected them most directly. The revival of the old civic arrangements is, however, as improbable as the revival of the old family arrangements. The level of civic engagement that impressed Tocqueville in 1831 would take up too many evenings for most Americans in 2009. With modern transportation and prosperity making geographic mobility possible, and career ambitions making it necessary, growing numbers of Americans feel a contingent rather than a custodial relationship to their places of residence.

Even for those who stay put, and take their local duties seriously, the pressure to outsource civic responsibilities is profound. In most of America, volunteer fire companies are a fading memory. Civic-minded townsmen used to run from their shops and offices at the sound of an alarm to assist endangered fellow-citizens. To use Rahe's terms about civic engagement generally, the fire companies helped their members gain "a sense of their own strength and significance," learn "how to act in concert," and "band together for the purpose of achieving ends that they could not have accomplished on their own."

It's just that the volunteers weren't very good at putting out fires. In lieu of letting well-meaning amateurs fail to prevent homes and workplaces from burning to the ground, cities and towns were happy to replace them with full-time professionals as soon as they could afford to. As with fire-fighting, so with the efficacious management of a whole range of municipal responsibilities. *Soft Despotism* deserves to be widely read, but even if it is universally read it is unlikely to cause the firings of hundreds of city managers, triggered by newly engaged citizens eager to assert their prerogatives and demonstrate their abilities to draft zoning codes and economic-development plans.

But if Rahe is unrealistic in some regards, he has nonetheless written a fine book. It is to be hoped that Rahe and other equally thoughtful conservatives will treat *Soft Despotism*'s conclusion as the point of departure for additional books. Those volumes will bear down on the question of what 21st-century conservatives can change and what they cannot: which battles can be won, and how they can be won; which battles are lost, and how to decide between prudently accepting or valiantly denying those defeats. **NR**

Reconsiderations

The Other O'Connor

TERRY TEACHOUT

THE O'Connor everyone remembers is Flannery, who wrote herself into the history of American literature by looking at the poor white Protestants of her native Georgia through the X-ray glasses of Roman Catholic dogma. But there was another Catholic novelist named O'Connor at work in the Fifties and Sixties, and for a time he was both better known and vastly more popular.

Edwin O'Connor first rang the gong of success with *The Last Hurrah*, a 1956 novel about an aging Boston politician that added a phrase to the English language and made the man who coined it rich and famous. Like Flannery, Edwin O'Connor was a devout, wholly orthodox Catholic. He was a daily communicant who stuck close to home, settling in Boston and writing about the people he saw there every day. But unlike the prickly author of *Wise Blood* and *A Good Man Is Hard to Find*, the other O'Connor, who died in 1968, had the gift of immediate accessibility, and readers in every corner of the land reveled in his stories of Irish-American life in mid-century New England. *The Edge of Sadness*, his 1961 tale of an alcoholic priest, was chosen by the Book-of-the-Month Club, condensed by *Reader's Digest*, and awarded a Pulitzer Prize. Not surprisingly, it was also one of the top ten bestsellers of the year, sharing the list with, among others, *To Kill a Mockingbird*.

Such popularity is not easily forgiven in certain cultural circles. Edmund Wilson, who knew O'Connor and admired him greatly, observed apropos of *The Edge of Sadness* that "a literary intellectual objects to nothing so much as a bestselling book that also possesses real merit." Small wonder that the book in question, like its author, is now all but forgotten, though it surfaced briefly four years ago as part of the Loyola Classics line of 20th-century Catholic fiction. Not a single print-media reviewer took note of its reissue. Yet *The Edge of Sadness* is more than a faded snapshot of Irish-American culture on the eve of Vatican II. It is, in fact, a middlebrow masterpiece, a piercingly poignant study of loss and redemption that is one of the most underrated American novels of the post-war era.

Hugh Kennedy, the narrator of *The Edge of Sadness*, is a 55-year-old priest from a city not unlike Boston who has just climbed back up from the end of his rope. Sent into an emotional tailspin by the death of his beloved father, he takes to drink and is sent to an Arizona retreat for wayward priests, there to grapple with a spiritual emptiness that has left him vulnerable to depression.

At length a chastened Father Kennedy returns to his hometown, this time to a Spanish-speaking parish that is nothing like the close-knit community where he grew up: "The church itself is the perfect mirror of the district: once, three generations ago, active, prosperous, in a way even noble; today, a derelict, full of dust and flaking paint and muttering, homeless, vague-eyed men. . . . In a sense it is hardly a parish at all anymore, but a kind of spiritual waterhole: a halting place for transients in despair."

All this, however, we learn not at the beginning of *The Edge of Sadness* but later on. The self-effacing Father Kennedy starts off by informing the reader that the story we are about to hear is not about him: "I am in it—good heavens, I'm in it to the point of almost never being out of it!—but the story belongs, all of it, to the Carmodys, and my own part, while substantial enough, was never really of any great significance at all." The Carmodys are a well-to-do family that Father Kennedy knew and loved as a boy and whose irascible octogenarian patriarch takes a renewed interest in him after he returns to Boston to pick up the pieces of his life. Charlie Carmody and his children, each one representing a different facet of the immigrant experience, are drawn with striking vividness and sympathy, so much so that it is not until well into *The Edge of Sadness* that we realize that

Mr. Teachout, drama critic of the Wall Street Journal *and chief culture critic of* Commentary, *wrote the libretto for* The Letter, *an opera by Paul Moravec that will be premiered by the Santa Fe Opera on July 25.*

the author has contrived to throw us off the scent: His real subject, it turns out, is not the Carmodys but Father Kennedy's painful journey from the slough of despond to the brink of renewal.

This deft bit of sleight-of-hand allows O'Connor to launch the novel by revisiting the same ethnic environs that he had already portrayed so affectionately in *The Last Hurrah*. In addition to the Carmodys, we meet a gallery of other Irish-American types who fill the book's pages with "the talk of old men and old women for whom the simple business of talking had always been the one great recreation." Their leisurely yarns of days gone by are as engaging to the reader as they are to Father Kennedy, who longs above all things to come home again: "I suppose it's the mark of the provincial man, but in any case I find that I have a special and lasting love for this place, which is so obviously just a place, which has no particular beauty or grace or grandeur of scene, but which is, quite simply, a neighborhood, *my* neighborhood, a compound of sights and smells and sounds that have furnished all my years."

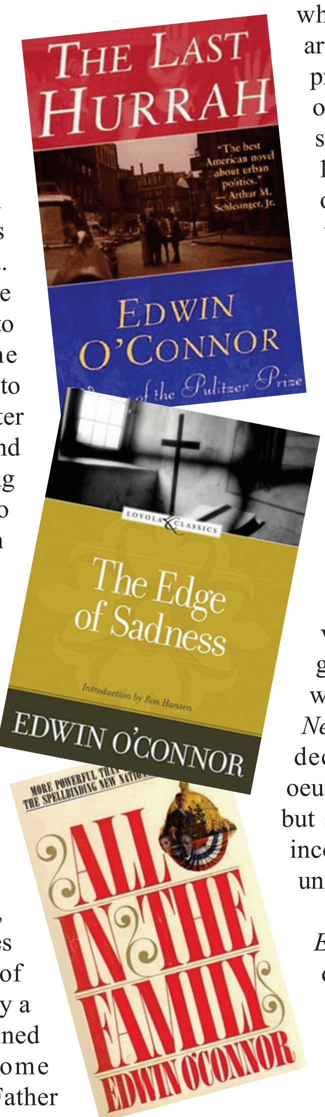
But O'Connor casts a colder eye on the Boston Irish in *The Edge of Sadness* than in *The Last Hurrah*, showing us how the fight for survival in a strange land turned Charlie Carmody into a flint-hearted businessman who in turn has alienated his children, each of whom bears the scars of inherited unhappiness. And though Father Kennedy delights in the stage-Irish charm of the Carmodys and their friends, he knows that their back-porch chat cannot fill the holes in his own soul.

In *The Living Novel*, V. S. Pritchett praised those novelists "who are not driven back by life, who are not shattered by the discovery that it is a thing bounded by unsought limits, by interests as well as by hopes, and that it ripens under restriction. Such writers accept. They think that acceptance is the duty of a man." Pritchett was talking about Walter Scott, but he could just as well have had *The Edge of Sadness* in mind, for it is above all a story of acceptance, a portrait of a group of men and women who find themselves forced at last to face the fact that their dreams will not come true.

This revelation is no less apparent to the Carmody children than it is to Father Kennedy, who sees it in the careworn face of Helen, the companion of his childhood, who escaped from her father's daily cruelties into a tepid, loveless marriage: "Nothing about her suggested the tragic figure, she didn't radiate mournfulness—far from that, but all the same I knew at once some element of happiness was missing. The edge of sadness was visible; it was clear that she hadn't found . . . what? What we all hoped to find, I suppose: at one time or another we're all optimists."

On the other hand, Helen has succeeded in coming to terms with the limitations of her existence, finding fulfillment in her son and grandchildren, and Father Kennedy in turn finds an even more consequential fulfillment in the destiny that he chooses for himself at novel's end. Instead of returning to the Carmodys' parish, he opts to stay at Old St. Paul's, the decaying inner-city church to which he was assigned after returning from Arizona, and to spend his last years doing what he can to coax it back to life. He does so, however, in the knowledge that Old St. Paul's will never be again as it was. All pretense is gone, and with it the illusions born of youthful ignorance; what is left is reality, hard and unsparing.

Yet the closing pages of *The Edge of Sadness* are also suffused with the warm glow of possibility, and never for a moment does it have the factitious feel of a confidence trick played by a bestselling author determined to send his audience home happy. For even though Father Kennedy continues to believe in "the essential *goodness* of man," he also knows that "only a fool can look around him and smile serenely in unwatered optimism." He knows, too, that the spiritual dryness that came close to destroying him can be held at bay only if he immerses himself in the daily life of his shabby parish, trading the easy familiarity of his old existence for the awareness that "while something was over forever, something else had just begun—and that if the new might not seem the equal of the old, that might be because the two were not to be compared . . . that something might be ahead that grew out of the past, yes, but was totally different, with its own labors and rewards, that it might be deeper and fuller and more meaningful than anything in the past."



After *The Edge of Sadness*, Edwin O'Connor published only one more full-scale novel, *All in the Family*, which was as popular and artistically successful as its predecessors. But the pace of change in America had sped up between 1961 and 1966, and a new generation of critics who had cut their teeth on high modernism now found little to like in an unselfconsciously old-fashioned storyteller who worshipped the gods of directness and simplicity. Two years after he died, Edmund Wilson and Arthur Schlesinger put together *The Best and the Last of Edwin O'Connor*, a well-meant anthology that sought in vain to keep his memory green. Denis Donoghue, who wrote about it in *The New York Review of Books*, declared that O'Connor's oeuvre was "a public success but still, in the artistic sense, incomplete, his possibilities unfulfilled."

Perhaps—but to read *The Edge of Sadness* today is to doubt the finality of that reasonable-sounding judgment. I thought it was an extraordinarily fine book when I first read it a quarter century ago, and now that I am almost as old as Father Hugh Kennedy, I think it better still. Few American novels have done a more honest job of telling how it feels for a man to come to the middle of life's journey, and even fewer have the power to fill their readers with a sense of hope strong enough to be felt not merely in the bright light of day but in the middle of the dark night of the soul. **NR**

Film

. . . and Away!

ROSS DOUTHAT

THE highest-grossing May movies included a prequel to the *X-Men* trilogy, a reinvention of the sprawling *Star Trek* franchise, the sequel to 2006's *Night at the Museum*, the fourth *Terminator* movie, and a sequel to *The Da Vinci Code*. The highest-grossing films of the next month or so will almost certainly include the sequel to 2007's *Transformers*, the third movie in the *Ice Age* franchise, and *Land of the Lost* and *The Taking of Pelham 1 2 3*, remakes of a Seventies television show and a Seventies caper movie, respectively.

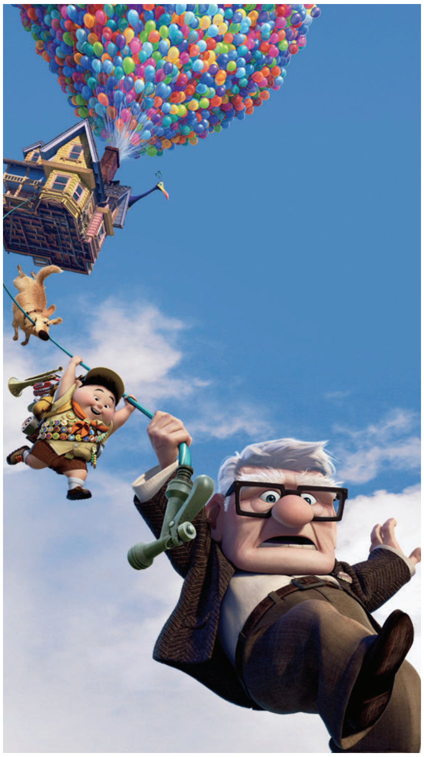
Perhaps you're detecting a pattern here. But then, thank God, there's *Up*, sitting between all these sequels and prequels and remakes like a battered Victorian house amid pricey modern high-rises—a Victorian house, that is, with a raft of helium balloons attached to the roof, tugging it upward toward the clouds. *Up* has no recognizable characters, no bankable stars, and no franchise potential. Its hero is a codger of 78; its decidedly unconventional plot mixes together elements from Arthur Conan Doyle, Chris Van Allsburg, and *The Notebook*. Yet the only question isn't whether its box-office numbers will climb, but how high.

That's because *Up* is a Pixar movie, and Pixar movies always prosper, defying all the laws of Hollywood gravity along the way. The Pixar people don't do adaptations and remakes. They don't hire big-name directors, and their voices are usually provided by working thespians—your Holly Hunters and John Goodmans—rather than high-profile stars. (*Up*'s biggest name is Ed Asner, voicing the senior-citizen protagonist.) Their stories are original and inventive, but also strange and sometimes hard to summarize. And they never fail to hit it big.

Individual directors sometimes have runs like this, but entire production companies rarely do. The pressures of philistinism and commercialism are too potent: Eventually, you end up making *The Incredibles Forever* or *WALL-E Salvation*, and churning out endless Happy Meal toys and direct-to-video knockoffs.

But not the gang at Pixar. The fact that they're doing animation helps, of course—among other things, they don't have to worry about A-list stars' demanding rewrites—but the more important factor may be the time they take on every movie. The idea that flowered into *Up*, for instance, first came to its eventual director, Pete Docter, during the making of *Monsters, Inc.*, all the way back in the year 2000. As he tells it, he doodled a floating house, borne aloft by helium balloons, and "it seemed very appealing and poetic and interesting. We started thinking, 'Who's in this house? Where is he going and where is he coming from?'"

Nine years later, we finally have the answer. The house belongs to Carl Fredricksen, creaky, cube-faced, and old—a grouch with a cane, hanging on to the house he shared with his late wife while a creative-class metropolis, all lofts and sushi bars, rises around him. His past is filled in via montage: a childhood spent playing explorer and watching newsreels about the famous explorer Charles Muntz; a marriage to a woman who shared his dreams of travel and adventure; and a lifetime of dashed hopes—infertility, penury, aging, and death, with the great voyages they'd planned to make together left untaken. It's the most quietly devastating ten minutes of animation since Bambi's mother took a hunter's bullet.



DISNEY/PIXAR

The movie isn't called *Down*, though, and the melancholic opening quickly gives way to a madcap, surrealist adventure, featuring lost continents, mythical birds, and dogs equipped with collars that translate their thoughts into English. (Professions of loyalty figure prominently; so do shouts of "Squirrel!") Condemned to a nursing home following an altercation with a construction worker, Fredricksen achieves lift-off instead, putting his career as a balloon salesman to good use and setting sail for the South American waterfall his wife always dreamed of seeing. Inevitably, he brings along a stowaway—a cherubic, chattering Scout named Russell, whose own child-of-divorce sorrows are swaddled in merit-badge-collecting good cheer.

But the melancholic note endures, vibrating just below the surface of the story. Like many Pixar efforts, *Up* is shot through with nostalgia. *The Incredibles* was an homage to the gee-whiz spirit of Fifties America; *Ratatouille* an idealized evocation of Belle Epoque Paris; *WALL-E* a Wendell Berry-esque fable about the corruptions of technology and the virtues of the soil. Here, the past being evoked is Hollywood's own age of adventure—the era of *King Kong* and *King Solomon's Mines*, when swashbuckling heroes and mythic locales played every day at the local movie theater.

Fredricksen's journey brings him face to face with his boyhood idol, the now-ancient Muntz, who's trapped himself in an Ahab-esque quest to capture an enormous, flightless bird. Together, they enact an afternoon-serial-style struggle, complete with dirigibles and dogfighting propeller planes. The joke, of course, is that they're both in their dotage—a septuagenarian and a nonagenarian, whaling away at each other with walking sticks, and freezing in mid-swing when their legs creak and their backs stiffen up.

The laughs notwithstanding, there's a patness to this windup that leaves *Up* in the second tier of Pixar films—closer to such middling efforts as *Monsters, Inc.* than to the blissful near-perfection of *The Incredibles* and the original *Toy Story*. But note that I'm using the word "middling" only to compare it with its sister films. Set against the rest of what Hollywood will offer us this year, *Up* is the absolute tops. **NR**

City Desk

Attention Getting

RICHARD BROOKHISER

WHEN I moved to New York, Ben Sonnenberg was a merry old troll who lived, not in a den under a bridge, but at 19 Gramercy Park, in the former Stuyvesant Fish house. The place had a staircase by Stanford White, and Sonnenberg had filled it with Sickerts and Sargents. He had reached this eminence via a career in public relations. He was able, for a price, to guarantee the cover of *Time* magazine. (His son, in a perfect *Buddenbrooks* touch, founded a literary magazine.) Those days are past. The cover of *Time* would cost much less now, and besides it's always reserved for Obama. But publicity marches on, and the city is still the great mill of it.

Before publicity there were patrons: Maecenas, the church, Lord So and So. The milestone at the end of the patronage system was Samuel Johnson's clash with Lord Chesterfield. Chesterfield had led Johnson to think that he would back his *Dictionary*, but then went MIA. Years later, as the work came down the home stretch, Chesterfield suddenly decided to puff it, in two letters to a weekly paper. Johnson, so long brushed off, wrote his immortal brushback: "Is not a Patron, my Lord, one who looks with unconcern on a man struggling for life in the water, and, when he has reached the ground, encumbers him with help?" But writers and artists did not emerge from the patronage system into some unencumbered state. As free agents they had to seek their living in the marketplace, which means seeking it, in the first instance, from publicity.

Publicity, publicity, what we do in thy name. My wife has a phrase, *painting your tuchus purple*. I haven't done that, but then no one has ever asked me.

Radio is an old medium—Marshall McLuhan thought it was "hot"—but Rush reminded us of its enduring power. Most radio gigs get bundled by middlemen and done over the phone from home. I remember one talk show in Philadelphia that ran for four hours, from 1:30 to 5:30 A.M. Just past my bedtime, I set myself up with a thermos and a lap rug. Much, much later I experienced the pain of seeing the first grayness, then hearing the uptick in traffic on Third Avenue, then seeing actual golden sunlight, laughing scornfully as I staggered to bed for the rind of a snooze. Then there were the oddball Christian and populist radio stations, which sounded, from the manifest inexperience of their hosts (who doubled as producers), as if they were being done out of farm kitchens in the Drought Belt. One youth kept me waiting for half an hour as he dickered with his sound man, until exasperation conquered shamelessness and I hung up.

We go out into the world and turn ourselves into chattering boobs, something we hope we are not.

Then there were the commercials you listened to while waiting to go on, or during breaks—weather in Yakima, traffic in Akron, sales on Roto-Rooting services, convertible beds, insurance. Will listeners really go from their morning drive or their lunch break to Amazon or Barnes & Noble and buy you? God knows (publishers don't).

Television can't be phoned in, except spiritually. It is a trip to a whole other affect. There will be three hosts—a young woman, whose hemline as she sits I cannot look at without opening myself to a charge of sexual harassment, and two men trading jokes. They are all happy! because they have had so much work done that the corners of their eyes and lips are permanently tweaked! and because their face makeup is red as fire engines! The music is like arena rock! and the stage lights are bright as an interrogation! Churchill said that meeting FDR was like having a glass of champagne, and being a guest on TV is like having your head jjackckhammered! The networks around Rockefeller Center have street-level studios so the Morlocks from the Midwest can watch the process. Eat your hearts out, you'll never be in here! (unless you win *American Idol*).

Finally there is print, which means the *New York Times*. Hate it, or hate it, it is the breviary of our class and generation. The macaronic carol *In Dulci Jubilo* says of heaven, "O that we were there." That is what the publicity-hungry say of the *Times*. But how to arrange it? You cudgel your brain for pegs. What would put the *Times* in the right frame of mind for a piece on, say, Gouverneur Morris? Have there been any one-legged adulterers in the news recently? Massacres in France? Writing of new constitutions? Ours is continually rewritten, but the *Times* thinks that's good—better stay away from that.

One of the great publicity coups in New York history was achieved by P. T. Barnum in the 1840s. His star performer at the time was a minstrel—a white man who did "Negro" dances and songs. But one day he took off on his own. Barnum managed to find a replacement who was even better, though there was a problem: the new performer was actually black—"and there was not an audience in America," as one contemporary wrote, "that would not have resented, in a very energetic fashion, the insult of being asked to look at the dancing of a real negro." Barnum greased the man's face, blacked him with cork, painted his lips red, and stuck a wig on him, until he looked like a white man pretending to be a black man.

This story is dense as a koan with our racial fears and envies. But it also exemplifies the black magic of publicity. We go out into the world and turn ourselves into chattering boobs, something we hope we are not. Yet, with luck, skill, and the courtesy of our audiences, we put enough of our real selves out there to bring people in closer. And that was one of the goals of self-expression in the first place.

If publicity was good enough for Jesus and Buddha, it's good enough for us. **NR**

Happy Warrior BY MARK STEYN

Net Losses

A MERE year ago the notion that the government would take over General Motors would have seemed incredible. Yet here we are, with the president of the United States firing the CEO and personally calling the mayor of Detroit to assure him he has no plans to move the head office out of the city. Not literally, not yet. But in any practical sense it's now headquartered in Washington. In another twelve months, I wonder what currently unthinkable scenarios will have become faits accomplis.

For those of us who have lived under jurisdictions where the government builds your car, the Obama presidency is already a kind of epic tragedy—1970s Britain but on a *Heaven's Gate* budget. Not just grey, humdrum, second-tier industrial decline—the kind that made Dundee, Scotland, just a plausible stand-in for Brezhnev-era Moscow when the BBC came to make a film on the Soviet retirement of the traitor Guy Burgess. No, this is a fabulous money-no-object plummet on caviar-greased skids. Millions and billions and trillions are shoveled into the hole, and leave no trace.

The (East German) Trabant:
When the government makes your car

President Obama, in that rhetorical tic that's already become a bit of a bore, likes to position himself as a man who won't duck the tough decisions. So, faced with a U.S. automobile industry that so overcompensates its workers it can't make a car for a price anybody's willing to pay for it, the president handed over control to the very unions whose demands are principally responsible for that irreconcilable arithmetic. Presented with a similar situation 30 years ago, Mrs. Thatcher took on the unions and, eventually, destroyed their power. *That* was a tough decision. Telling your political allies they can now go on overpaying themselves in perpetuity is a piece of cake.

When the going gets tough, the tough get bailed out. Your car business operates on a failed business model? Don't worry, the taxpayers will prop that failed business model up forever. You went bananas on your credit card and can't pay it back? Don't worry, we'll pass a law to make it the bank's fault. Your once golden state has decayed into such a corrupt racket of government cronyism that the remaining revenue generators are fleeing your borders faster than you can raise taxes on them? Relax, we're lining up a federal bailout for you, too. Your unreadable newspaper has just woken up from its 96-page Obama Full Color Inaugural Souvenir bender to discover that its advertising revenue has collapsed with the real-estate market and GM dealerships? Hey, lighten up, Senator Kerry's already been pleading your case in the Senate. Is it really so hard to picture President Obama calling the mayor next spring to assure him he has no plans to move the *New York Times* out of New York?

This is now a land that rewards failure—at the personal, corporate, and state level. And, as conservatives well know, if you reward bad behavior, you get more of it. If you reward it as lavishly as the Obama administration's doing it, you'll get the Radio City Christmas Spectacular of Failure, on ice and with full supporting orchestra.

There is a phrase you hear a lot in Canada, Britain, and Europe to describe the collection of positive "rights" (to "free" health care, unemployment benefits, subsidized public transit) to which the citizens of Western democracies have become addicted: the "social safety net." It always struck me as an odd term: Obviously, it derives from the circus. But life isn't really a high-wire act, is it? Or at least it didn't use to be. If you put the average chap—or even Barack Obama or Barney Frank—in spangled leotard and tights and on a unicycle and shove him out across the wire, he's likely to fall off. But put the average chap in spangled leotard and tights out into the world and tell him to get a job, find accommodation, raise a family, take responsibility, and he can do it. Or he used to be able to, until the government decided he needed a "safety net."

When did human life become impossible without a "safety net"? My neighbor's family came to my corner of New Hampshire in the winter of 1767–68 when her great-great-great-whatever dragged his huge millstones up the frozen river from Connecticut to build the first gristmill on a swift-running brook in the middle of uncleared forest in a four-year-old township comprising a dozen families. And he did it without first applying for a federal business development grant. No big deal. Her family's nothing special, my town's nothing special: That's the point. It was routine—in a pre–"safety net" society.

In his new book, *Soft Despotism, Democracy's Drift*, Paul Rahe writes, "Human dignity is bound up with taking responsibility for conducting one's own affairs." But today the state cocoons "one's own affairs" so thoroughly as to remove almost all responsibility from modern life, and much of human dignity with it. And, if personal consequences have been all but abolished, societal consequences are harder to dodge. Sometimes great powers decline slowly, almost imperceptibly, as Britain did for much of the 20th century. Sometimes it's more sudden and convulsive. Obama is attempting Euro-statism, but, unlike Europe, without the counterweight of America to preserve some approximate relationship to reality. Which is to say I do not think this decline will be genteel, for America or the world. **NR**

JORG GREUEL

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